DOCUMENTS ON KASHMIR PROBLEM

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DOCUMENTS ON KASHMIR PROBLEM

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Discussion of the India-Pakistan Question in the Security Council Meeting

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Introduction

The history and culture of Jammu and Kashmir were part of the pan-Indian civilization. It was partly due to geography, the Himalayas and the Western and Eastern ranges separating it from rest of the world, and partly due to the Brahmanical culture, with Sanskrit as the lingua franca, which gave it a unity in the eyes of the upper strata of society. From centuries, Kashmir remained free from racism, communalism and casteism even during the communal structure of Dogra Raj. The National Movement against the feudal exploitation, led by Sheikh Abdullah, which was started in 1930 and continued upto 1947, was the result of the growth of national consciousness in Jammu and Kashmir. Various national leaders of India, including Pandit Jawaharlal Nehru and Maulana Abdul Kalam Azad recognized the democratic and nationalist spirit of this struggle. But British imperialists and the Hindu press tried to interpret and project it as a "result of the dispute between the Hindus and the Muslims". Inspites, this anti-feudal movement was participated by a broad section of peasants and artisans came out to fight in the streets. This insurgency of 1931 awakened the national aspirations of the Kashmiris, which ultimately helyed in the emergence of a composite Kashmiri culture without any emphasis on Muslim sectarianism. By 1939, every conscious member of Hindu, Muslim and Sikh community joined the national movement. The anti-feudal and anti-imperialist struggle reached another high pitch in 1946. The AJKNC launched the "Quit Kashmir" movement and submitted a memorandum to the Cabinet

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Mission of 1946 demanding absolute right to freedom from the autocratic rule of the Dogra house. The movement was to counter the threat of Muslim communalism that was spread in the wake of Pakistan movement of Muslim League. It also salvaged the tradition of secular nationalism in Kashmir, Launching this struggle for a decisive victory. Sheikh Abdullah, on 15 May 1946, reiterated at Srinagar that "the demand that the princely order should quit the state is a logical extension of the policy of "Quit India". When the freedom movement demands complete withdrawal of British power, logically enough the stooges of British imperialism should also go and restore sovereignty to its real owners, the people...the rulers of Indian states have always played traitor to the cause of Indian freedom. A revolution upturned the mighty Tsars and the French Revolution made short work of the ruling class of France. The time has come to tear up the treaty of Amritsar, and quit Kashmir. Sovereignty is not the birth right of Maharaja Hari Singh, Quit Kashmir is not a question of revolt. It is a matter of right". The Sheikh was arrested on the charge of sedition against the Maharaja. Followihg his arrest whole valley rose in an uprising. On 19 June 1946 Pandit Jawaharlal Nehru, Aruna Asaf Ali, Dewan Chaman Lal and Tilak Raj Chadha went to Srinagar to defend Sheikh Abdullah at his trial but were arrested by the Maharaja's administration. On his return to Delhi, Nehru complained to Gandhiji and Maulana Azad, the Congress President that people in Kashmir were grooning under the reign of terror. Mahatma Gandhi visited Kashmir in August 1947 as a guest of National Conference.

The 'Quit Kashmir' movement kept the Muslim communalism in Kashmir at bay. Immediately after independence and the creation of Pakistan Jinnah decided to wrest Kashmir by force and sent raiders for this purpose. The Maharaja of Kashmir was fled. Jawaharlal Nehru decided to send troops to rescue Kashmir on the request of the Maharaja on 24 October 1947. It was done after Kashmir had legally acceeded to India. On 26 October 1947 Sheikh Abdullah also formed a peace brigade and the peoples' militia to defeat the aggression

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of Pakistan in the valley of Kashmir. Sheikh Abdullah, the doyen of nationalism, succeeded in restoring Hindu-Muslim harmony in the valley when the rest of India was burning by communal holocast. There was a good rapport between Sheikh Abdullah, Mahatma Gandhi and Pandit Jawaharlal Nehru. Congress demanded the release of Shelkh Abdullah, and the establishment of popular government in Jammu and Kashmir. National Conference favoured accession of India without instrument of accession.

The Pakistan reacted sharply and contested the validity of the accession. India took the Kashmir question to the Security Council of the United Nations on 1 January 1948 [S/628]. Pakistan made counter complaint [S/646] but admitted that some tribesmen from Pakistan might be helping the "Azad Kashmir government". After debate the Security Council passed two resolutions [S/651 and S/654]. It appointed a three member Commission to investigate and mediate in the matter. On 13 August 1948 the UNCIP submitted a report to the Council in three parts [S/1100; S/1196, and S/1430]. Part first of the report contained provisions for a cease fire. Part two dealt with a truce agreement, and Part third with the holding of a plebiscite after the implementation of first two parts. India agreed but Pakistan did not. Later on both countries accepted the proposal submitted by the UNCIP to the Security Council on 5 January 1949 dealing with the plebiscite. The cease fire came into effect by 1 January 1949 and a cease fire line was agreed upon in July 1949. But a truce agreement could not be finalised due to opposite stands of both the countries.

The Security Council then appointed mediators. In 1949 General Mc Naughton of Canada was appointed as a mediator who's proposal was rejected by India. Sir Owen Dixon of Australia also could not succeed because he proposed the partition of Kashmir between both the countries rather than a plebiscite (S/1791). Frank P. Graham of the USA was the third mediator appointed in April 1951 also met with the same fate, however, he suggested a direct negotiation between India and Pakistan. He submitted five reports S/2375, S/2448, S/2611, S/2783 and S/2967.

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In July-August 1953 and in May 1955 the Prime Minister of both India and Pakistan started negotiated settlement which ultimately failed. After a gap of five years the Pakistan Foreign Minister F.K. Noon raised the Kashmir issue in the UN Security Council and call upon India to refrain from accepting any change in the new constitution of Kashmir—the State of Jammu and Kashmir is and shall be an integral part of the Union of India—and to accept a plebiscite [SCOR, 12th Yr., Mtg. 761]. Mr. V.K. Krishna Menon, the Indian representative informed the Council that the conditions for holding a plebiscite changed in Kashmir, [SCOR, 12th Yr. Mtgs. 762, 723 and 794]. The Security Council favoured plebiscite by adopting a resolution [S/3739] on 24 January 1957. On 21 February 1957 President Gunnar Jarring of Sweden was asked to act as mediator but India refused to accept him for the implementation of the UNCIP resolution, [S/2821].

Meanwhile, the National Conference demanded special status and autonomy for Kashmir in the political—constitutional framework of Indian political system. Article 370 of the Indian Constitution granted Kashmir a special position. It produced a hostile backlash among the Hindi-Hindu fanatics including Sardar Patel and Hindu lobby which demanded conformity of minority to Hindu majority views as well as uniformity by force. In Kashmir this Hindu lobby started non-cooperation movement against the government led by Sheikh. It was supported by the Jana Sangh, the Hindu Mahasabha, the RSS and even by the Akali Leader Master Tara Singh and Mr. S.P. Mookerjee, They criticised Nehru's appeasement policy towards Kashmir. Mr. Mookerjee called this policy as "national liability". This non-cooperation was also supported by Jayaprakash Narayan and Acharya Kripalani. This fanning of the flame of Hindu communalism—especially, in Delhi, Uttar Pradesh and Punjab—resulted in the ambivalence in Sheikh's position about accession to India. Nehru succumbed before these reactionary elements ultimately. Sheikh Abdullah now came to the conclusion "that there was no middle course between full integration and full autonomy, and as the majority in Kashmir would not accept the first alternative, there was no choice but to accept the second."

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Finally on midnight of 8-9 August 1953, the popularly elected leader of Kashmir was dismissed and imprisoned in a most undemocratic and unceremonious fashion by violating the special provisions made in the Article 370 of the Constitution.

On 2 December 1957 Security Council passed a resolution S/3922 after considering the Jarring report and directed P. Graham to make recommendations [S/3984] to the parties for facilitating a peaceful settlement and for the implementation of the resolution of the UNCIP of 13 August 1948 and 5 January 1949. The Graham report was rejected by India.

During Ayub Khan's regime Nehru-Ayub talks commenced in 1959 and 1960. On 6 October 1960 President Ayub Khan gave a threat of Military settlement of the Kashmir Problems. Threats and counter-threats continued till Chinese aggression on India in October 1962. Besides Pakistani slogan of *Jehad* President Ayub Khan put pressure on USA to exercise its influence for the settlement of the Kashmir issue. The matter was again raised in the Security Council on 1 February 1962 by Pakistan Permanent Representative Zafrullah Khan who asked the Council to take up the consideration of the dispute and to secure to the Kashmiri people their right of self-determination [SCOR; 17 Yr. Mtg. 990]. In the subsequent meetings of the Security Council [Mtgs. 1007 to 1016] Mr. Zafrullah Khan put forward his arguments in support of Pakistan's claim over Kashmir. Mr. C.S. Jha, India's permanent representative to the UN and Defence Minister Krishna Menon contested the Pakistani contentions [SCOR, Mtg. nos. 1009, 1011 and 1016] and supported by the U.S. representative and Indian position by the Soviet and Rumanian representatives. US and British representatives on 27 April 1962 tried to persuade the UN Secretary General U Thant for negotiating settlement. The issue was again raised by Mr. Plimpton, US representative, on 21 June 1962 and on 22 June 1962 when he succeeded in pursuading the Irish representative to introduce draft resolution which was vetoed out by the Soviet Union [SCOR, 17 Yr. Mtg. 1016] Prime Minister Jawaharlal Nehru expressed deep concern over the attitude of Great Powers—the U.S.A. and the U.K. After the Chinese invasion on India both Nehru and

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Ayub agreed for negotiated settlement. Six round of Bhutto—Swaran Singh talks were held between 27 December 1962 to 16 May 1963. The talks failed on the question of distribution of areas.

The disturbances in Kashmir on the disappearance of the hair of prophet Mohammad from the Hazaratbal shrine on the night of 26-27 December 1963 gave opportunity to Pakistan to raise Kashmir question in the Security Council. Though the hair was recovered, Pakistan's Minister of External Affairs, Z.A. Bhutto sent a letter to the Security Council for an urgent meeting [S/5516] to debate on grave situation of the State. Mr. Bhutto asked for a "move towards an honourable and joint solution" of the problem in Security Council's meetings held between 7 February to 11 May 1964 [Mtgs. Nos. 1087, 1089, 1104, 1112 and 1114]. Refuting the charges Mr. M.C. Chagla and Mr. B.N. Chakraverti described the incident as "purely a domestic matter". [Mtg. nos. 1088, 1104, 1113 and 1115]. Though Mr. Roger Seydoux, President of the Council submitted his statement on 18 May 1964 but nothing tangible came out of the debate. [SCOR, Mtg. no. 117].

The Indian government released Sheikh Abdullah on 8 April 1964 withdrawing all charges against him. He was sent to Pakistan to resolve the issue but sudden death of Nehru on 27 May 1964 dashed all hopes. Ayub-Shastri meeting on 12 October 1964 at Karachi and J.P. Narayan's visit to Pakistan brought no change in the attitude of both the countries. Meanwhile Sheikh Abdullah was again arrested on 8 May 1965 on charge anti-India propaganda. Sino-Pak unison persuaded Pakistan to send armed infiltration into the valley from 6 August 1965. India reacted against this attack specially in the Chhamb. The war was stopped on 22 September. Tashkent Declarations, signed on 10 January 1966 restored the *status quo* in Jammu and Kashmir as it was existed before the 5 August 1965. The Pakistan Foreign Secretary Aziz Ahmed and later on 14 January 1966 President Ayub Khan declared that peace could not be achieved unless the dispute over Jammu and Kashmir was settled honourably and equitably. Bhutto also

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blamed India for creation of the problem. Talking to the British Prime Minister Harold Wilson on 23 November 1966, Pakistani President Ayub Khan said that people of Kashmir "did not like Indian rule" and added that India did not honour the commitment under the Tashkent Declaration. Not only this while speaking before the UN General Assembly meeting on 29 September 1966 Pakistan Foreign Minister, Sharifuddin Pirzada accused India for not honouring the UNCIP resolution of 13 August 1948 and 5 January 1949 about holding of a free and impartial plebiscite [GAOR, Pen. Mtg. 1423]. He also tried to raise this issue in the Commonwealth Prime Ministers' meeting held in London on 13 September 1956. He charged the Indian government with reluctance to allow the Kashmiri people to exercise the right of self determination. Even Prime Minister Mrs. Indira Gandhi gave a statement in Lok Sabha that "India is not obliged by the Tashkent Declaration to settle the Kashmir dispute with Pakistan". Pakistan government started anti-India propaganda. Ayub Khan described Indian army as "special danger to Pakistan". He stressed on the solution of the Kashmir problem. On 10 October 1967 Pakistani Foreign Minister Mr. S. Pirzada raised a question in the UN General Assembly meeting [GAOR. Plu. Mt. 1584] and demanded "self-determination" for the people of Kashmir, to which India was committed. Similar demands were made by Arshad Hussain, the new foreign minister of Pakistan in the UN General Assembly meeting [GAOR, Pl, Mtg. 1982] and Pakistan's National Affairs Minister Nawabzada Muaammad Sher Ali Khan, [GAOR Plan. Mtg. 1775] on October 2, 1959. Pakistani Home Minister Sardar Hamid accused India for avoiding discussions in the United Nations [GAOR, Pln. Mtg. 1853] on 29 September 1970. Meanwhile, Pakistani press, specially *Pakistan Times* and *Dawn* made vehement propaganda against India. "That India is suppressing freedom of the press in occupied Kashmir and adopting ruthless measures in curbing the students and youth" Kashmiris are treated as second class citizens. Pakistan supported the terrorists in Kashmir.

A hand grenade was thrown on the Kashmir Chief Minister, G.M. Sadiq on 16 May 1966. Terrorists confessed that they

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were imparted training by Pakistani officers. The subversive activities of the Pakistani infilterators continued till date. The cease-fire violations took place frequently. Both India and Pakistan accused each other for violation of cease-fire agreement. In short Kashmir remained full disturbed between 1966 and 1969.

Pakistan protested strongly against India's measures to extend the application of Indian laws to Kashmir and described these contrary to the UNCIP and other resolutions of the United Nations. These bills, according to Pakistan, would give sweeping powers to the Indian Government to outlaw any organisation or any individual found guilty of questioning the India's sovereignty over any of the territories.

On 11 January 1968 Prime Minister Mrs. Indira Gandhi and Deputy Prime Minister, Morarji Desai desired to normalise relations with Pakistan by implementation of Tashkent Agreement but Pakistan did not respond favourably. Pakistan was insisting on "meaningful discussions on Kashmir". India's appeal to Pakistan for no-war pact' was turned down by Ayub Khan who described this proposal as "misleading" unless Kashmir dispute was solved. During the time Sheikh Abdullah and Mirza Afzal Beg were released from Jail on 3 January 1968. They demanded self determination for the Kashmiris. The hostile and anti-India attitude of Sheikh Abdullah put India in embrassing situation.

General A.M. Yahya Khan who assumed the charge from President Ayub Khan on 25 March 1969 showed his willingness for some time to establish a peaceful atmosphere between the two countries. Mrs. Indira Gandhi sent a personal letter to Mr. Khan on 22 June 1969 and suggested to revive the no-war pact proposal and a joint machinery to examine comprehensively all aspects of normalisation of relation. General Yahya Khan accepted the proposal with provision that the machinary of Indo-Pakistani body should discuss all issues including Kashmir and Farakka barrage. But after the exchange of letters between the two governments, no follow-up actions could be taken up by either of the governments. Instead

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President Yahya Khan banned all the exchange of printed materials between India and Pakistan, commercial, economic and cultural relations were completely cut off. Tashkent agreement, though Mrs. Indira Gandhi wanted to implement, went unsung and unheard. On 28 July 1970 President Yahya Khan again asked for amicable solution for Kashmir problem to establish cordial relations between both the countries.

Mr. Z.A. Bhutto advocated for quasi-military approach for the solution. Ashohar Khan recommended Algeria type struggle for Kashmir liberation. General Yahya Khan raised Kashmir's issue in UN General Assembly in October 1970 and demanded 'self determination' and withdrawal of forces of the two countries. India rejected the proposal and told that the State's accession to India in 1949 was complete. However, India favoured bilateral talks under Tashkent spirit. Mr. Z.A. Bhutto exploited the situation by raising war bogy against India. He formed Pakistan People's Party on 1 December 1967. December 1970 polls in Pakistan brought conflict between East and West Pakistan, ultimatety resulted into the creation of Bangladesh. India-Pakistan relations were further deteriorated when on 30 January 1971 an Indian Airlines plane was hijacked to Lahore with Pakistani connivance and was allowed to be blown up at the Lahore airport. Hijackers were granted asylum and were given hero's welcome there. India banned all Pak flights over the Indian territory. After India-Pakistan war of 1971 both Mrs. Indira Gandhi and Mr. Z.A. Bhutto on 2 July 1972 concluded an agreement at Simla. It was promised to respect line of control resulting from the cease-fire of December 17, 1971 in Jammu and Kashmir. They also decided to settle the Kashmir issue by mutual talks. President Zia-ul-Hag, Prime Minister Benazir Bhutto. Rajiv Gandhi, V.P. Singh and Sheikh Abdullah came and went but the Kashmir remained unsolved.

Documents on Kashmir Problem is an excellent attempt of authentic and comprehensive compilation of published documents and other literature on the subject—Kashmir dispute. It presents the text of important documents including publications of the Government of India and Pakistan, United

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Nations official documents, treatments, treaties, agreements, proposals, debates—both in UN Security Council, General Assembly—and Parliamentary debates— reports and recommendations, letters, telegrammes etc. The publication would help the research scholars, academicians, educationists, politicians as well as curious laymen in understanding the issue. Compilers have made an honest attempt to be objective and impartial in compiling, editing and presenting the documents to prove their authenticity the sources of documents are also added.

We express our deep sense of indebtedness to the library staff of Indian Council of World Affairs Library, New Delhi, Nehru Memorial Museum Library, New Delhi, United Nations Information Centre, New Delhi, Jawahar Lal Nehru University Library, New Delhi, and Ministry of External Affairs Library, New Delhi for the help rendered to us during our visits there.

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175. *Text of the speech made by Mr. Krishna Menon (India) in the Security Council meeting No. 801 held on 13 November 1957.*

I am grateful to the President and the other members of the Council for having adjourned the meeting on the last occasion.

Before I deal with the main subjects that are left over, I ask the indulgence of the Council to clear up a certain matter that came up at the 800th meeting. Recalling what was said on behalf of the Government of India in relation to the proposal of the Swedish Government, and considering that it might perhaps lead to some misunderstanding of what was said, I should like to make this statement clear. There was no suggestion at all that the representative of Sweden was doing anything but representing the views of the Swedish Government, nor was there any suggestion that a representative of the Security Council sent in a selective capacity and not as the representative of this country could not produce any views that were identical with his country's or otherwise. All I sought to point out was with that Mr. Jarring had established, mainly, that the deadlock was centred in part I of the resolution of 13 August 1948 and that whole of this procedure was on the lines of the resolution, would not be identical with the other view, because that would involve challenging the sovereignty of the Union of India, which is the basis of the resolution.

On the subject matter itself, the Government of India has not turned down, out of hand, at any time any proposals which are comprised by the various remedies set out in the Charter. Then I went on to point out what would have to be considered and how the non-consideration of any part would be considered an admission on our side that part was not worth considering.

I hope that this explanation will bring about some satisfaction.

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There is only small element that is left in the previous statements made by the representives on the Security Council—and that is the statement made by the representative of Iraq, who, I am sorry to say, said the following :

> "We wonder, therefore, if the new stand of the Government of India regarding the non-implementation of part I of the resolution of 13 August 1948 is not on the one hand an afterthought, and on the other, an attempt to re-open issues which have long been closed." [797th meeting, para. 67.]

We regret a statement of this kind because, to a certain extent, it is an attribution of motives. But let that lie ; we do not mind. However, I want to say that the facts are such that whatever we have said here is not an afterthought in substance. It is quite true that, each time one speaks on a subject, he may present a thing in a better or a worse way. But I invite the Government of Iraq to peruse the entire record in this matter, from the time that this question came here, on 1 January 1948, until whatever time it was. And it will be found that on every occasion—when the Commission was appointed, during the whole of the discussions of the Commission from the time that Pakistan admitted the invasion of India in May 1948 until the time when the Commission became transformed into an individual, in the person of Sir Owen Dixon, and afterward in the person of Mr. Frank P. Graham—when this matter has come up, we have always said that there are letters from the Prime Minister of India to the Commission which are on record, there are the answers, there are statements made before this Council. These are all during the period when the Commission itself was continuing active negotiation. We have also the support in this matter of no less a person than Sir Pierson Dixon, on the last occasion, when he told us : "Augmentation makes removal or reduction more difficult." What more is required ?

On 7 February 1950, Sir Benegal Rau said the following on behalf of India, which was then a member of the Security Council :

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"India's case is that, just as the entry of the Pakistan troops into Kashmir was wrong and an act of aggression, equally wrong and aggressive was their building up of the subversive "Azad" Kashmir forces and their occupation of a large part of the State." [463rd meeting, p. 11.]

I do not want to elaborate on this matter, but it will be recalled that I pointed out in one of my previous interventions that the Commission had said in so many words that Pakistan had used the period in question in order to consolidate its position. Sir Benegal Rau continued :

"All these things must be completely undone before there can be a plebiscite." [*Ibid.*]

Thus, it is clear that our stand is not an afterthought.

On 1 March 1951, Sir Benegal Rau said the following to the Security Council :

"The Kashmir case has now been before the Security Council for more than three years. No solution has yet been found, because the root-cause of the trouble, namely, the unlawful occupation of nearly half the State and the creation of subversive forces and authorities therein by Pakistan, has been allowed to continue. [In other words, part I of the resolution of 13 August 1948 has not been implemented.]

"... so long as the root-cause of the trouble continues, there can be no solution to the problem." [533rd meeting, para. 18.]

I would ask Mr. Jawad, not as President of the Security Council, but as representative of Iraq, to reconsider, in the light of the evidence that I have already placed before the Council and will now place before it, the statement that our stand is an afterthought.

Later, Mrs. Pandit said the following on behalf of India at the Security Council's 608th meeting—that is, after Mr. Grahm had been appointed :

"Despite Pakistan's denials and protestations of innocence,

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the regular Pakistan army also invaded the State on 8 May 1948, according to the later admission of the Pakistan authorities themselves. This unprovoked aggression and invasion of the territory of a neighbour and a Member State is a gross violation of the Charter of the United Nations as well as of International law . Until the Council is prepared, firmly and courageously, to face this central issue, no just and lasting solution can be found.

"The relative position and status of the parties in this dispute, and therefore the issue itself, will not be set in the proper context unless they are related to these basic facts...." [608th meeting, paras. 4 and 5.]

The basic facts to which Mrs. Pandit was referring are the facts contained in part I of the resolution adopted by the United Nations Commission for India and Pakistan on 13 August 1948 [S/1100, para. 75].

I therefore submit that I not only have answered the representative of Iraq as regards the facts, but also have shown that the reflection made in the statement of the delegation of Iraq does not fit in with those facts of the case.

I shall deal now with an aspect of the subject which was only touched on in the debates at the previous series of the Council but which has taken on importance because of various statement made by members of the Council during the present series of meetings, because of conditions obtaining in India, and because of facts that are implied in, contained in, or behind Mr. Jarring's report. In my first intervention at this series of meetings, I merely referred to this aspect of the question. I have in mind what are called the northern areas.

The Security Council has heard a great deal about the "Azad" forces. It has been told the reason for the self-confessed invasion of India by Pakistan. The Foreign Minister of Pakistan said to the Council : "Yes, we invaded the country; we marched troops into the country. Why ? Because we wanted

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to protect our own frontiers." In other words, in order to protect Pakistan's frontiers, Pakistan marched troops into Kashmir : a part of India. But that statement referred to West Kashmir. Until recently, there was never any suggestion that there were any "Azad" forces in what are called the northern areas.

The Government of India first referred to this matter in August 1948. As I have repeatedly stated before the Council, it was the outstanding desire of the Government of India at that time - as it was the desire of all concerned – to bring about a cease-fire and, in order that such a cease-fire might be achieved, to put on one side questions which could be discussed and decided subsequently. That was the reason why material other than the cessation of hostilities was brought into the resolutions of 13 August 1948 and 5 January 1949. The Government of India, however, referred specifically to the northern areas in August 1948. At that time negotiations were going on between the Commission and Pakistan, on the one hand, and the Commission and India, on the other, prior to the formulation of this resolution, which was accepted by India in August. In a letter dated 20 August 1948, the Prime Minister of India wrote the following :

> "The authority of the Government of Jammu and Kashmir over this region as a whole has not been challenged or disturbed, except by roving bands of hostiles, or in some places like Skardu which have been occupied by irregulars or Pakistani troops... We desire that, after Pakistani troops and irregulars have withdrawn from the territory, the responsibility for the administration of the evacuated areas should revert to the Government of Jammu and Kashmir and that for defence to us.... We must be free to maintain garrsions at selected points in this area for the dual purpose of preventing the incursion of tribesmen. . . . and to guard the main trade routes from the State into Central Asia." [S/1100, para. 80.]

That was the position taken by the Government of India at that time.

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According to the Commission, the Commander-in-Chief of the Pakistan Army informed it that :

> "The purpose of sending Pakistan troops into the State [was] the holding of the general line Uri-Poonch-Naoshera."

Now, the general line Uri-Poonch-Naoshera is in West Kashmir, where these so-called "Azad" Kashmir forces now are. This line runs from north to south along western Kashmir. Thus, there was no suggestion in 1948, when the Commission's resolution was adopted, that the northern areas were occupied by Pakistan troops.

The fact that there might have been insurrections or even rebellions, discontent among the civilian population, if you like, or that there might have been internal disturbances, even granting there was any such state of affairs, would be no argument for a neighbouring, friendly State to take advantage of that situation and establish its authority. It would be even less of an argument for the Security Council to suggest that someone else can do it. The Commission therefore did not give particular consideration to the situation which would arise in the northern area, because it was considered as part of the whole State. In replying to the Prime Minister of India, the Chairman of the Commission stated :

> "... due to the peculiar conditions of this area, [it being mountainous and sparsely populated] [the Commission] did not specifically deal with the military aspect of the problem in the resolution of 13 August 1948. It believes, however, that the question raised... could be considered in the implementation of the resolution." [S/1100, para. 81.]

Therefore, the whole question of the northern area was not decided in any other way except as being part of the State of Jammu and Kashmir. If it was not part of that State, whose State was it ?

On 28 March 1949 the Government of India propsed to

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the Commission that it should manintain garrisons at selected points in the northern area. That is referred to in paragraph 256 of document S/1430. The Commission replied that it had given "serious consideration to India's position, which was based on legal claims."

If the Security Council and the United Nations as a whole can afford to disregard the legal foundations of a State that would be a sad day. The Commission's first truce proposals of 15 April provided that :

> "In the sparsely populated and mountainous region of the territory of Jammu and Kashmir to the north, observers will be stationed [I want note to be taken of this paragraph because we have questions to ask of the Security Council.] .. who, in the event that the defence of this territory becomes necessary, will so advise the Commission. The Comission in this case, or [not "and"] at the request of the Government of India, may agree that the Government of India post garrisons at specified points of this area."

Now, are not the people of India and their Government entitled to inqure why it is that no observers were stationed and why it is that after the time of the negotiations after the appointment of the Commission, the advancing of the Pakistan army into this area came about ? The Commission had undertaken the responsibility of saying "observers will be stationed". It did not say "observers may be stationed". There are no observes. Therefore, the effect of the resolution has been to permit the occupation and annexation of considerable parts of the State soon after the negotiatoins began. The Commission put forward this as a formula, and Mr. Lozano's correspondence on this matter is clear. I submit, with great respect, that the representative of Colombia has very grave responsibility in this matter because we undertook all these things on the assurances given to us by Mr. Lozano, and afterwards by Mr. Korbel and various others who were Chairmen of the Commission. They were not private assurances, they were assurances given on behalf of this Organization. Furthermore, the

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Commission has published the fact that all the assurances were made public, and that one side has not been told something that was concealed from the other.

Therefore, as I have stated, we were told that there would be observers and that India need not push its legal claims because, if it were necessary, the Commission would let us go there. That was a formula, not a settlement formula, but a formula which the Commission regarded as "an equitable compromise between the opposed views of the two Governments ; it minimized the possibility of the renewal of fighting, yet took into consideration [these are the words of the Commission] India's claim to responsibility for the defence of the State." This is a claim which we have never forsworn and which is inseparable from the integrity and sovereignty of the Union of India.

In the third interim report of the Commission it is stated :

> "In replying to the 15 April proposals the Government of India reaffirmed its request that it be allowed to maintain garrisons at strategic points. It felt [again as a compromise] that the question of the administration of the area could be discussed separately."

The Commission informed us that the question of sovereignty, as such, was not in challenge. It said :

> "The Commission did not ignore India's claim to the right to safeguard the security of the State nor did it put into question the legality of the Jammu and Kashmir Government."

I ask the members of the Council whether there is anything in the record of the Commission, anything in the practice of Governments or in international law about when, without any overt action, two States of Jammu and Kashmir came into being. It is conceivable that the Government of Jammu and Kashmir may be different tomorrow. Sovereignty may change.

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The soverignty of places has changed from time to time in various parts of the world, but at the time when this was being considered, when the matter came before us, there was only one State of Jammu and Kashmir.

The problem was dealt with in the Commisson's truce terms of 28 April 1949. Those terms state that :

> "Observers will advise the Commission and/or the Plebiscite Administrator regarding development in the sparsely populated and mountainous region of the territory of Jammu and Kashmir in the north. Without prejudice to the provisions of point 8 of the resolution of 5 January 1949, should the Commission and/or the Plebiscite Administrator conclude upon advice from the observers, [who were not stationed there] or upon reports from the Government of India, that it is necessary for the the defence of the area, the Commission and/or the Plebiscite Administrator may request the Government of India to post garrisons at specified points."

In ask members of the Security Council : would the Comission, representing this Council, have called upon a foreign Government to retain garrsions in that area ?

The Commission also stated that :

> "in its reply to the truce terms on 18 May 1949 the Indian Government repeated that the principle that Indian troops should garrison important strategic points should be accepted. The Government of India suggested that the points to be so occupied be the subject of discussion with the Commission, and again proposed that the question of the administration of this area be left over for the time being."

All along, the Government of India has tried in this matter not to press its tightful claims—even as it is doing now—to the logical limits. We know that there has been trouble : we have come here to offer a conciliatory solution. There have been insurections. We were quite prepared, provided our legal claims, our sovereignty, not were questioned, to try to find ways

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and means not to aggravate the situation. I ask the Council, does not that approach to a problem call from the Council for a far more responsive attitude in regard to the claims of the sovereignty and integrity of the Union than has been expressed in the various decisons or resolutions passed by the Council ?

A practical solution and a practical arrangement were what the Commission asked us to find. Even further, our military advisers told us then that the Indian garrison should be atleast at fifteen strategic points to protect the caravan roads.

As a matter of compromise, we informed thc Commission on 17 June 1949 that we would be willing to occupy only seven points in the expectation that all regular and irregular Pakistan forces would be withdrawn from the State. And they are still there :

> "Should this expectation not be realized [the Commission said, in its report] or should a threat to the security of the State or the maintenance of internal order arise from any other source, the Government of India desired to be free to garrison any or all of the fifteen points mentioned previously. India explained that it felt compelled to make this reservation because it believed that measures taken by Pakistan such as the construction of roads and the provision of arms and supplies to points like Skardu could, in the view of India mean only that Pakistan did not wish to withdraw from the territory or, after withdrawal, intended that those who stayed behind could create turmoil."

These are not afterthoughts ; shis appears in the third interim report of the Commission for India and Pakistan.

Finally, the question arises : what was the status of these areas at the time when the resolutions were passed by which the Security Council and the parties are engaged ? What was the status of these trritories ? I take courage to think that any party, any Member State whose approach to this problem, or understanding of the facts of the case are very different from ours, will admit that the Security Council had laid down—and

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it should be a part of international practice—that the period of negotiation should not be used for further conquest and further consolidation. This is a point that is relevant to what has been said in the Council. Therefore, it is worth, in view of the present positition of Pakistan, to consider what was the status of this territory in fact in 1948. The Commission says that the northern areas were not, "in the autumn of 1948, under the effective control of the Pakistan High Command." When the 13 August resolution was passed, according to the Commission, these areas were not under the effective control of the Pakistan High Command "in the sense that the Commission understood the term "effective control". The report continues : "The Pakistan Government stated that *no* Pakistan regular troops at any stage were employed in the operations which took place between May December 1948."

I would request the Council to note those dates. Let us accept this statement as it stands. If there were no troops between May and December 1948, then it was not an occupied area. If it was not an occupied area, it could not become an evacuated area. It was still an integral part of the Union in fact and in law. But, says the Commission, therefore it could not be regarded as evacuated territory. The Commission says :

> "...It was precisely because the Commission undersood 'evacuated territory' to mean that territory in Western Kashmir [that is, in the Uri-Poonch area] where regular forces of the Pakistan army were operating and assisting the "Azad" Kashmir forces that the Commission in August stated to the Prime Minister of India that the question of the military aspect of the territories in the north of the State had not been dealt with in the resolution of 13 August."

That is to say, if a certain military position in relation to a territory which is part of the Union, according to the resolutions, changes, does it mean that it belongs to somebody else ?

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The paragraph continues :

"...The Commission was informed that it was for the defence of the Western area that the Pakistan regular forces had entered the State of Jammu and Kashmir."

In other words, if there was any justification, not from a legal point of view, but from the point of view of Pakistan, it was in regard to Western Kashmir. Pakistan had not emerged at all in the northern area at this time.

The Commission states further :

"When it drafted the 13 August resolution the Commission did not consider the northern area in the same light as it did western Kashmir...."

In other words, no question of local authorities, no question of "Azad" troops, no question of anything but the sovereignty of the Union of India, arises in regard to the northern territories. If there was insurrection, if we have internal difficulties, if there is resistance from local forces, no country is free from this, least of all Pakistan. That would be no argument for removing the territory from the sovereignty of the Dominion. The Government of Pakistan, therefore, in our submission, is in no doubt about this matter.

I would ask Council to take note of the next paragraph, which I, frankly, had not seen until relatively recently. It is a paragraph that leaves no room for doubt. On 27 August 1948, the Czechoslovak Chairman of the Commission, Mr. Korbel wrote a memorandum in reply to the letter and memorandum of August 1948 from the Minister for Foreign Affairs of Pakistan. He says :

"Surveiliance of territories of the State of Jammu and Kashmir other than those now occupied by the Pakistan Army and forces under its control is not provided for in the resolution. [This only applies to what is now wrongly called Azad Kashmir.] "The adminstration of such areas

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> [that is, the areas other than those occupied by Pakistan] remains under the jurisdiction of the Government of the State." [S/1100, annex 27, appendix, para. 8.]

Therefore, if this is true, if this memorandum of 27 August 1948 is a communication from the Security Council, then it means that any other position taken thereafter would be a violation of the resolution not only a violation of the sovereignty.

But all this very soon changed in fact. The Pakistan Government said that no regular troops were in this area from May to December 1948. By January 1949 what had happened ? The Commission says :

> "However, by January 1949 Pakistan undeniably held military control over the northern areas ; the area was administered by local authorities, not those of the Jammu and Kashmir Government, with the assistance of Pakistan officials."

I ask every member of the Council, particularly the representative of the United Kingdom, whether there can be any justification in international law and equity for arguing the case or putting forward the point of view that he has done, and that has been advanced all along in this matter, when the period of negotiations and resolutions and the period immediately following the period of trying to establish a cease-fire line has been used for consolidation—because from May to December 1948 there were no troops in there, according to the Pakistan statement.

The Commission says :

> "... by January 1949, Pakistan undeniably held military control over the northern areas ; the areas was administered by local authorities, not those of the Jammu and Kashmir Government, with the assistance of Pakistan officials."

If it were only local authorities, one could understand.

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There was a civil war and you could not do anything about it. But when another country comes into a sovereign State, it is a different proposition. That is what happened, and you will find this corroborated afterwards by no less a person than Sir Owen Dixon.

On 15 April 1949, the Commission repeated their assurances to us when they said :

> "In the sparsely populated and mountainous region of the territory of Jammu and Kashmir in the north, observers will be stationed who, in the event that the defence of this territory becomes necessary, will so advise the Commission. The Commission, in this case, or at the request of the Government of India, may agree that the Government of India post garrisons at specified points of this area."

This was not only written to us, but also to the Minister for Kashmir Affairs in the Government of Pakistan. The Government of Pakistan had then been informed that if necessary Indian garrisons would take over.

The United States Vice-Chairman of the Commission, in a letter of 16 April 1949 to the Pakistan Ministry for Kashmir Affairs – whatever that may be—writes the same month:

> "I understand the intention of the Commission to be that it may agree to the stationing of Indian troops at specified points should it be convinced, in the light of all the circumstances, that it is necessary for the defence of that territory."

This is the position as we see it in regard to the northern areas. These northern areas were differently administered at different times under British rule. But at no time did they have a seperate sovereignty. When the British withdrew from India, when paramountcy lapsed, when the British power was withdrawn, the British did not as a matter of law leave any authority behind in these places. Whether they were called residents,

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agencies, administered areas, whatever they might have been, they were all under the suzerainty of the Maharajah of Jammu and Kashmir. Therefore, there was no other territory there except the State of Jammu and Kashmir. So I submit that Pakistan's occupation of these northern areas is part of the annexation and therefore a violation of part I of the resolution of 13 August 1948, a violation which makes any further progress impossible.

More than that: Since the appeal has come from the most friendly quarter of all both privately and publicly, namely, from the United Kingdom, how can the United Kingdom address an appeal to us for any further progess in the way of what they call truce negotiations when, not out of our suspicion but by the facts established, every negotiation is used for the spoliation of our territories? It is not a question of how we can trust them because our minds are distrustful, but here are the facts before you. First of all, there is concealment in the Security Council. Then, there is this spurious explanation that the Council was not informed that there was an invasion because the Commission had not been set up, which is contradicted by the facts. Even if the Commission had not been set up, the Council could have been informed. But the Commission had been set up. Further, the whole of that period has been taken up by a further consolidation both in the north and in the west. What is more, there is the self-confessed admission of Pakistan that a sister State, a neighbouring country, which has taken no small part in historical terms in the emergence of Pakistan itself, had been invaded, not because there was invasion from its side, but as a protective operation. That is the position.

The reasons, if any, given to Mr. Lozano, the Chairman of the Commission, about the Pakistan attitude in regard to a part of these northern areas, namely, the Gilgit Agency, are not without interest. I hope the representative of the United Kingdom, with all the expert knowledge that he will have available at his disposal, will try to look at the evidence. On

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18 July 1948, Sir Mohammed Zafrullah Khan said to Mr. Lozano :

> "In late October 1947, representatives of the Gilgit Agency had requested accession to Pakistan, but the Pakistan Government had not taken any decision at that time." [S/1100, annex 8.]

If true, it is a very correct position. How could they take any decision? The Gilgit Agency could no more accede than a subdistrict in India or anywhere else. So it is quite correct. But he goes on to say :

> "There had been frequent requests from the Gilgit Agency which had clearly indicated that, if no action were taken by Pakistan, it would seek accession to the Union of Soviet Socialist Republics." [*Ibid.*]

We have had no communication about this either from the Gilgit Agency people—if they are entitled to do so—or from the Union of Soviet Socialist Republics. Even if they had wanted to accede to anybody, I do not see what that had to do with the matter at all. Therefore, you can see there is an attempt to put before Mr. Lozano, Chairman of the Commission, what would happen if these people did not take over the Gilgit Agency.

On 26 April 1949, Mr. Gurmani, who was then the Minister for Kashmir Affairs and a member of the Pakistan Government—not now, I believe - in a letter to the Chairman of the Commission, disclosed that these areas were firmly under "Azad" control. Now, how can that be ? We were told by Pakistan itself that between May and December 1948, there were neither troops nor anybody there and that Pakistan had nothing to do with it. Four months later, in 1949, the responsible Minister of the Government informs the Commission that these areas are firmly under "Azad" control. If "Azad" control means a government that is part of the Government of West Kashmir, it is even now not true. In any case, there can be no

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other control there except what may arise out of local insurrection or out of our willingness to stay out, or out of the Commission's appeal not to do anything that might lead to a renewal of conflict.

As I pointed out before: "Azad" control means, according to them, local authorities under the direction of the Pakistan Government. But Mr. Gurmani, the Minister for Kashmir Affairs, Government of Pakistan, enlightens the Commission on 26 April 1949, only four months after they had said there was nobody there, as follows in a letter to the Commission :

> "Efforts are being made to make the route Gilgit (Bunji) —Skardu also jeepable within a short period. [This is supposed to be territory over which we have no jurisdiction whatsoever.] . . . There exist: a good all-weather Dakota strip at Gilgit; a good-weather Dakota strip at Skardu; a Dakota strip at Chilas."

We will hear more about Chilas if this matter comes up again in a few months.

That these airstrips were constructed under Pakistan occupation is also clear from the following—and that is my statement: In addition to all that is necessary for living there such as the usual consumer goods, these strips and roads have been built in these areas. We are not objecting to progress, but the question is: Who has the authority to build these places? Is it suggested that a handful of people living out there could build airstrips and could construct these roads and so on? Even if it is so suggested, it will be denied by the Pakistan Minister himself who says that they have built it. What is more, you can find items relating to this expenditure in the Pakistan budget. The Pakistan budget for 1957-58 makes a provision under demand No. 30 of capital outlay on civil aviation for the construction of runways and terminal buildings at Gilgit.

There are two or three matters to be considered. First of all, that comes out of the Pakistan budget. I have not examined carefully what demand No. 30 is, under what heading it comes.

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Let us assume that it comes under civilian demand. What right does Pakistan have to build these things in somebody else's territory? Secondly, under the cease-fire agreement they are not permitted to do these things, even assuming that this was an evacuated territory. Then we come to the constitutional aspect of it on which I had some respectful differences with my colleague, the Foreign Minister of Pakistan, the other day, with regard to the constitutional aspects arising from the Pakistan Constitution. The Establishment of the West Pakistan Act of 1955 includes some of the northern areas in its territory. The annexation of other areas is covered by section I, clause 2, sub-clause (*c*) of the Constitution of Pakistan, which refers to territories under the administration of the Federation but not included in either Province; that is to say, either the Pakistan Government takes any territory under its administration, and then even if it is not one of its Provinces it becomes part of Pakistan. That means annexation.

What my Government is trying to convey to the Security Council as best as it can is that you have before you the fact that part of the territory of the Union of India has been annexed by Pakistan which has no status whatsoever in this matter except that of a defendant, and whatever arrangements have been made with Pakistan have been in order to stop the fighting, in order to obtain the evacuation of the territory and so on. I could give you more evidence from the statement of the present Foreign Minister of the direct nature of the administration of these territories, but it would not be necessary.

Finally, I should like to say on this subject that I have already pointed out Pakistan's stated position as to why they had entered. I have also pointed out that they have said that they were not in the northern areas between May and December 1948. Now we come to January 1949, when Pakistan held military control. Therefore, it is clear that either Pakistan concealed the presence of its troops in this area, which I think is not an uncharitable or mischievous inference to make, but a realistic one from the facts of the case, because it has always done so—either Pakistan concealed the presence of its troops

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in this area, as it did in regard to the first entry of the troops and the build-up of the "Azad" Kashmir forces, or this area was occupied by Pakistan troops after the cease-fire of 1 January 1949. Even if it entered there between the period of May to December 1948, which it says it did not, then it acted by way of concealment, and the result is concealment of facts from the Security Council. The resolutions of 13 August 1948 and 5 January 1949 were passed, as has been implied several times and pointed out by the Commission, without the knowledge of these facts, and several times material change have taken place. If the Commission had known that, it would have not that in; if it had known that, it would have done something else. Either, therefore, that was concealed or the entry of Pakistan army and its administration of this area came after the cease-fire, in which case it is a violation of part I—a further violation of part I—of the resolution of 13 August 1948. The whole territory, comprising several tens of thousands of square miles, was annexed, occupied and military administered. That is a gross violation of part I of the resolution and goes further to strengthen the position established by Mr. Jarring in his report.

Further, what I have read out sets out in the Commission's own language the legal position of India in regard to the sovereignty of its territory, its right to security, to establish garrisons and how important it is from the point of view of geography, the international lay-out of this place, the trade routes of Central Asia and how all along, in the interests of the interests of the cessation of hostilities, the Government of India has played itself down in regard to pressing its claims. It only asks for the minimum assertion and exercise of its rights in order to protect its own territory. That is the position with regard to the northern areas. It may well be that further observations on this subject may come up which may require answers, in which case the Government of India reserves its position.

Now we come to the observations made mainly by the United States and the United Kingdom followed up by the

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others who all say, "If everybody agrees, we have no objection." That is a topic which Sir Pierson Dixon. I think it was, chooses in the first instance to call "demilitarization". I personally cannot find fault with him for using the word "demilitarization"; even if I could, I would not want to. But it must be understood that the word "demilitarization" in connexion with Jammu and Kashmir is used only in the context of the resolution, namely, by agreement to diminish the number of troops and the quantum of equipment, not demilitarization in the sense of neutralizing a territory or anything of that kind. In the course of the negotiations we ourselves have casually used this phrase, but not in the sense of any abrogation of sovereignty. I am not going to start from the various statements made before the Council with regard to demilitarization, but let us take the problem by itself. What is meant by demilitarization? We are for demilitarization in the sense that if Pakistan will take away the troops, take away the equipment, take away the organization, take away everything that they are not entitled to retain there in term of part I of the resolution of 13 August 1948—that would be progress towards the implementation of part I and, if it were succeeded by a continuous period of the observation of paragraph E and no threat to the security of the Union, a new situation would arise. Therefore, demilitarization cannot refer to the Union of India.

Since you, Sir, come from a new sovereign State yourself, may I say this with great respect. This Security Council, or indeed any part of the United Nations, has no right under the Charter, under no resolution of the United Nations so far, even apart from this subject, to call upon one individual country to demilitarize itself for no reason. We all want demilitarization of the whole world, and I wish that some of the statements made, for example, by my colleague, Mr. Walker of Australia, had been made in some other place. We were told by Mr. Walker that :

> ". . . the need for all possible progress to be made in the rapid economic development of India and Pakistan renders the maintenance of armed forces on the present scale in

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relation to the Kashmir situation an increasing handicap. There is also the view, which has been so widely expressed in the United Nations, that balanced reductions in armed forces can contribute, perhaps more than anything else, to an increase in mutual confidence between countries suspicious of each other's intentions." [798th meeting, para. 12.]

We are all looking forward to seeing how Mr. Walker will vote tomorrow, but why the problem of disarmament should be singled out in its application to us we do not understand. So, to a sovereign State there can be no demand for demilitarization. We are entitled to maintain what troops we can afford. If they violate international law, the consequences will fall upon us, but no appeal can be addressed to any country in the form of a unilateral injunction to demilitarize. And, if I may say so, I am rather surprised at the wording used in some of the resolutions which Dr. Graham has carried to India where the Security Council asked Dr. Graham to effect the demilitarization. How Dr. Graham can effect demilitarization I do not know. He can recommend demilitarization to us, but he cannot effect it. It is impossible. Therefore, any request to any sovereign State for demilitarization, without any other circumstances binding it, would, I submit, not be in consonance with the present state of affairs in the world or with any provision of the United Nations Charter or with any resolution. But if any country has made a specific agreement with regard to its troops, the situation is different. Supposing we made a proclamation by an instrument that we wanted to be treated as an international instrument—shall we say as in the case of the Egyptian Declaration on the Suez Canal of 24 April 1957 [S/3818]—we would have an international obligation to do whatever was in that instrument.

Therefore, it comes to this. The so-called demilitarization —that is, any problem affecting either the quantum, the weight, the quality, the augmentation or whatever it may be of military strength—is, as far as we are concerned, strictly bounded by any undertakings that we may have given. And that is what

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we have been discussing for a long time. What are the undertakings of 13 August 1948 and 5 January 1949, and where do they take us ? And if Mr. Jarring's position is to be taken as being that he has established that a deadlock has been reached with regard to the implementation of part I of the resolution of 13 August 1948, then the question of demilitarization applies only to our friends from Pakistan. It is a question that ought to be addressed to only one place, and to nobody else.

There is no title resting anywhere to call upon a sovereign State to demilitarize—however weak it may be, however humble, however poor or however backward. We are still all Member States of the United Nations. But if any State, however powerful, has given an undertaking, then that undertaking has to be carried out, and in this particular case the undertaking—so-called and if any—can only be by the engagement of these resolutions. So we come back to resolutions, and when we come back to the resolutions one cannot read the resolutions from the top upwards. The resolutions are so constructed that certain things happen, and then a new situation arises. When that new situation arises, some other action is performed. Then something else happens. India has undertaken, on its side, to carry out some undertakings.

So, at the present moment, this question of so-called demilitarization, in the sense of dehydrating troops anywhere, can apply only to our friends across the border who have their troops inside our borders. The appeal cannot be addressed to us. If, on the other hand, the position taken up by the representative of the United Kingdom, followed by the representatives of the United States and Australia, relates to part II of the resolution of 13 August 1948—and if, what is more, the latter part of part II of the resolution has to be performed before the initial part and before part I—I think we have given our answer at length.

Not only have we given our answer at length. We, as a people, whatever our position may be as a State in the world, have the obligation and the natural desire of a nation to

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maintain our independence and our integrity, and we cannot be called upon to permit the security of our territory to be violated. I have said all along, and even at the risk of repetition I say again, that the purpose of the other side has been to make use, for the purpose of military consolidation of every act of negotiation and everything that is done to send someone to make any request. Therefore, when we are asked for demilitarization, at the present moment my Government does not desire to go into this proposition any further than is necessary out of courtesy to the Security Council and to enable it to acquaint itself with the facts of the position, because there are no proposals before us. When those proposals come it will be time for my Government to take them into account, in the light of what I am saying today.

What would demilitarization mean, and when will it take place ? One hundred per cent of the demilitarization is in the territory of India. Whether it be on this side of the cease-fire line or on that side, the demilitarization is in India and the militarization is in Pakistan. And let us not forget that even Mr. Jarring, a neutral observer, has been obliged to point out to the Council—I do not remember his exact words now—that the changing situation in the world and the various political alignments, relationships and so on in South-East Asia all have to be taken into account.

I have no desire, on the one hand, to repeat what I have said—in order not to touch upon any factor on which other countries are sensitive with regard to the augmentation of the military strength of Pakistan—but when a country is called upon to take down its defences, well, the Security Council takes a very grave responsibility. And I say that we see no basis for it whatsoever. In the terms of rhe resolutions of 13 August 1948 and 5 January 1949, all we have before us is first, paragraph E and then paragraph B of part I of the resolution of 13 August 1948—because, knowing our friends as we do, we would first like at least to see some difference of behaviour in regard to words and psychological warfare, even before guns are removed.

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We regret that with one or two exceptions notably Sir Pierson Dixon—very little notice has been taken by members of the Security Council in their public statements of the fact that a new phase of aggression has begun, even on the territory within the cease-fire line. Are we to put ourselves in a position to be able to tell our people that the discussions in the Security Council are to be used again as a facade or an opportunity for violating the integrity of our territory and creating upset and trouble in the country ? Is it suggested that a country like the United Kingdom seriously thinks that an accredited representative of the Government of India, speaking under instructions, would place before the Council—with its intimate knowledge of our administration and with its member's knowledge of the facts about what is going on—facts and matters of this kind if they were not so ?

Would we come here and point out that a new phase of this war had begun ? Are we not entitled—to put it at its lowest—to have legitimate suspicions, which in this case are something more than suspicions, in view of the facts of the past ? Therefore, when it comes to demilitarization, my Government would like to say, first of all, that as an *ad hoc* or *de novo* proposition by itself it cannot be addressed to any single country. In the context of Kashmir, if it is to be addressed to anybody in the interests of international peace and security and the interests of international good behaviour, it ought to be addressed to our neighbours, asking them to remove the accoutrements of war from the territory of a neighbour State.

If it is to be addressed in terms of the resolution, then we are to pursue the line Mr. Jarring pursued, so far as you are concerned, strictly to confine yourself to that and come to the position where you find a deadlock—the report is a report in our favour—the deadlock in relation to part I of the resolution of 13 August 1948. How can there be the taking down of our defences when the period of the twelve months or so that followed the negotiations, the establishment of the Commission,

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has, according to Pakistan's admissions, been used to invade our country—not even to protect what they regarded as their co-religionists but in order to protect their own frontiers—that is to say, for the alleged protection of their territory, to come and invade ours? Well, that belongs to a century that has long been left behind. No country in the world would be safe, if the Security Council subscribed to that proposition.

Therefore, we would beg the Security Council to take into account the political the moral, the psychological results of pronouncements it makes. Obviously, if both parties do not agree to a resolution, that resolution remains where it is so far as the facts are concerned. That has been so with many resolutions. But that is not the whole of the story. Is it right that a great many peoples in the world—our own people, for example—should come to the belief that, irrespective of performances in the past, we are called upon to throw the consideration of the defence of our motherland to the winds, open the floodgates of invasion to marauding peoples on our frontiers. That request, however well-intentioned, is not justified by previous history. This problem will come up, no doubt—and I am instructed to deal with this matter only when we have a definite proposition before us—but, out of courtesy to the Council and my desire not to hold anything up our sleeve, we have put our position before you.

References have been made to Mr. Graham. We are told that various commissions have in the past tried to look at the demilitarization—that is to say, tried to reduce the military strength on either side in order to make a plebiscite possible—this, that and the other—starting from the time of Sir Owen Dixon. I stand subject to correction. And I do not want to rely on this statement as part of any procedures which may have to be taken in the future. But if you read Sir Owen Dixon's report [S/1791], the main impression you get is that he was not pursuing that resolution as such; he was trying to see in his own way whether anything could be done about it for a conciliatory settlement. And that is why Sir Owen Dixon said that there had been a violation of international law.

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But it is true that the Government of India did agree, without any prejudice to any other positions, to explore the possibilities of the implementation of part II of the resolution of 13 August 1948. It did agree to explore the possibilities. Is that wrong? Because a Government, in spite of what it considers well established rights, which are easily proved by the documents before you, is prepared to facilitate the process of conciliation – is it to be penalized for that reason? You cannot penalize us, because we have not at any time abandoned anything in this matter. What is more, we have been very careful, in view of all the circumstances and of the general necessities of political discussion, to state our position.

When Mr. Graham was first coming to India, we participated in some discussions, and the Prime Minister wrote to Mr. Graham—to whose courtesy and kindness and general friendliness toward all concerned we are only too ready to bear witness—a letter dated 11 September 1951, in which he said :

> "As you are aware, we were glad to meet you and your associates, as we are eager to find a way to a peaceful settlement of the Kashmir question. We made it clear to you, however, at the very outset of our discussions, which were informal, that for the reasons explained by aur permanent representative to the Security Council, Sir Benegal N. Rau, we have found ourselves unable to accept the Council's resolution dated 30 March 1951, and that our discussions were without prejudice to this stand of the Government of India. The views that my Government are submitting now on your proposals are similarly without prejudice to that stand." [S/2375, annex 3, para. 2.]

That is to say, anything we have said to Mr. Graham at any time, any memorandum we might have exchanged at any time, any memorandum we might have exchanged, any consideration of any problem, is purely exploratory.

What is more, in municipal law, in international law—not so much perhaps in international law, because it is not nearly

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so formal—an agreement means the consensus of minds. And those minds must meet not on the periphery of the proposition but on the core of the proposition. Although it has not been put in those legal terms, it appears, in Mr. Graham's report. Unless there is essential agreement, a meeting of minds on the core of a proposition, there is no agreement. Mr. Jules Moch, a distinguished representative—with whom, I am sorry to say, one is not always in agreement - speaking on 22 October 1957 in the first Committee of the General Assembly on disarmament, said : "In building a bridge, unless the whole thing is complete, there is no bridge." No international negotiation—indeed, no private negotiation—would be possible, if it were thought that to say "Yes, that is all right" about any part of it would be regarded as a binding contract. And, what is more, in this particular case of the five reports of Mr. Graham, the same story runs. I submit that you cannot judge these things merely by placing proposals as points 1 to 12 and then arguing that all facts are free and equal. There is no disagreement on eleven and a half points, and there is no agreement on half a point, but it is the half point that is important. That is how it is.

But that is not the only position. The Council is somewhat allergic, I think, to our disadvantage, when we quote legal authorities. But the Council cannot disregard the findings of the Permanent Court of International Justice on these matters. There are scores of cases, but the majority of them—or a good many of them—would be cases in which either the United Kingdom or the United States of America is involved. They have contributed so much, by case law, to the establishment of principles of international law. Therefore, we have avoided quoting them and we have tried to find a case which does not, for once, apply to these two countries. In its judgement in the case concerning the factory at Chorzow—a case brought by Germany against Poland—this is what the Court said :

> "Before proceeding to set out the reasons for which it must overrule the preliminary objection taken by Poland to its jurisdiction to deal with these submissions, the Court would observe that, for the purposes of this state-

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ment of reasons, as also for the purposes of its future judgement on the merits, it cannot take account of declarations, admissions or proposals which the Parties may have made in the course of direct negotiations which have taken place between them, declarations which, moreover, have been made without prejudice in the event of the points under discussion forming the subject of judicial proceedings. For the negotiations in question have not, as acknowledged by the representatives before the Court of the Parties themselves, led to an agreement between them."

If the whole of the Graham proposals had been agreed to by the two parties and then if either party went back on them, there would be a breach of agreement. But what has happened in this matter is this. An attempt was made to find some method of passing over to part III of the resolution of 13 August 1948. Part II, therefore, was interpreted as—and, for the purpose of exploration, we did not object—contrary even to the Commission's findings. The Commission had definitely laid down that there could be neither simultaneity nor synchronization. The resolution definitely placed the responsibility for non-augmentation, and so on, on both sides – which now rests only on the other side—and the removal of troops in two stages on Pakistan before a single Indian soldier is removed. It does not anywhere call upon us to agree to the arming in any way of what have been called "Azad" forces. The Pakistan Government refused to recognize the "Azad" Government. I do not know whether it does now or not. The Security Council has never done so.

We did all this by way of exploration, but there has been in the five reports at no time any agreement on the crucial matters. In fact, Dr. Graham has, with great integrity and a great deal of painstaking, set out an exposition of the two points of view—I am only concerned with that of my Government—which makes it impossible for there to be a bridging on that basis. In fact, what Mr. Graham's fifth report does points out is the impossibility of proceeding to part II. Further, if I

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may say so with respect, but for the overwhelming emotional feeling inside Dr. Graham for finding a settlement by conciliation, the logical conclusion to be drawn from his reports is that part II cannot be implemented except by resolving the block in part I.

In his fifth report, Dr. Graham concluded :

> "After thorough consideration of these communications and further conversations with the representatives of India and Pakistan, the United Nations representative felt that there was no ground left at that stage on which to continue the conference and therefore, with the agreement with the two representatives, he decided to conclude it." [S/2967, para. 52].

That is merely an abandonment of that procedure. If you like to be courteous, he suggested postponement *sine die*.

On 15 February 1957, under instructions—it is not necessary for me to say "under instructions", because it cannot be anything else, but in this case under specific instructions —from the Government of India, I made the following statement :

> "While I am on this point [that is, the Graham discussions] I might deal with one other matter, because my Government is very anxious and very concerned that no statement of ours or any errors of omission or commission should afterwards be charged up to us as a commitment. We have suffered by moderation. We have suffered by reasonableness in our proceedings before this Council. Every time we have considered a hypothetical proposition and every time we have agreed to embark upon an exploration, it has been charged up against us as a commitment. Therefore, I want to say here and now that whatever mathematical calculations were made with regard to 6,000 or 3,000 or 12,000 or 21,000 in the various previous negotiations, these no longer hold true, because no offer that is not accepted is a binding contract, either

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in the case of individuals or in the case of of nations. Otherwise we should have a number of floating commitments, and no country would know where it stood. In the course of long negotiations, all kinds of offers are made. If the Secretary-General were to be committed to the many suggestions which he must have made in the past sixty days—then he would be in an awkward position. [That was during the Middle East troubles.] The same thing is true with respect to a government.

"Therefore, I want to say here and now, Mr. President, that if you were to go to India [that was when Mr. Jarring's visit was mooted] or if anyone else were to go, it would be no use telling us that we agreed to this and that at the time and that 'now therefore you are committed to it'. We agree to nothing—we discuss all these proposals. They must all be considered, as with any problem, in the context of the time. We agree to things to which we are parties." [769th meeting, paras. 70 and 71.]

On 20 February 1957 the same matter was raised again. The Government of India desired this to be placed on the record, and I stated :

"What is more important—and we want to put this into the record—the Government of India is no longer committed by any intermediate discussions that have taken place, by any hypothetical propositions that have been put to them, or by any mathematical calculations made by Mr. Graham at various times. All these things were part of the procedures to find a settlement.

"If the margain had been closed, we would be bound by it. We have been bitten so many times (especially when we just heard the representative of the Philippines, on whose statement I shall comment in a moment) we have no desire at all for the Security Council to misunderstand our position. It is wrong to say that some advance has been made in regard to demilitarization. The only

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advance that has been made in regard to demilitarization —and it would be useful for the Council to know it—is the voluntary withdrawl of the Government of India of large numbers of troops from Kashmir since cessation of hostilities—for which the Council has not been gracious enough to say one word of appreciation—without any conditions whatsoever.

"With regard to these references to a single and continuous process, simultaneous withdrawals, synchronized arrangements, all these things and all these words have been differently interpreted by the United Nations Commission for India and Pakistan, by the United Nations representatives afterwards; and whatever discussions may have taken place, either in New York, Geneva, New Delhi, Karachi, Paris or anywhere, they are all today only part of historical material; they do not commit the Government of India to anything, because there was no closing of any bargains, and it should not be said afterwards that where it is advantageous to one side that is taken as a commitment, and where it is not advantageous, it is pointed out against us.

"Therefore, the only engagements from which we can proceed, in so far as we can do so, are the engagements to which we are parties, in the context of all the circumstances submitted. Therefore, I would like this particular factor to be written into the record so that in the event of the matter coming up again [as it has now] or having anyone else intervening, whether it is your distinguished self, Mr. President, it should not be thought that now we have gone back on something else, because unless this attitude is taken, it is impossible to discuss anything, any *pro tem* proposition, any exploration; any thinking aloud becomes dangerous because at that moment we will be pinned down to it. What is more, the whole surrounding circumstances have to be taken into account." [773rd meeting, paras. 60 to 63].

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That was the position that was stated by the Prime Minister to Dr. Graham, both orally and afterwards in writting, in September 1951, and that is our position today.

What is more, these reports refer to the situation five years ago. I have no desire to pursue this matter further, because if there is no progress alone these lines there is no necessity for me to weary the Council with more detail. On the other hand, if the countries usually associated with this venture are going to bring up proposals, that will be the time for them and for us to speak about it.

I want to say here and now that, before we can state a final position on any proposal that may come before this Council, we shall have to see the proposal in writing, we shall have to hear the arguments for or against them, and we shall have to submit them to the Government of India for its views. That, I think, is an extremely reasonable position. This problem has been before the Security Council for ten years. To the Security Council it is probably only one of the many problems in the world. To us, however, it is a problem that vitally concerns the integrity, the honour and the self-respect of our people. It is a problem that recalls to our mind the spoliation of our territory and the plunder that has been committed by our neighbours—in the first instance, without admitting it and, afterwards, admitting it. Today, to our knowledge, members of the Pakistan Government are inviting rebellion in our country. Are we to be told by the Security Council, that, owing to some mistaken conception of commitment which we have not made, we should pull down our fences and throw away the hard-won independence of our people ? I am sure that is not proposition which the nations of the world would address to us.

The position of the Government of India is put very faithfully by Mr. Graham. He says in his fourth report :

> "Constitutionally the defence of the entire State of Jammu and Kashmir is the concern of the Government of India, and it alone is entitled to maintain a military armed force for the purpose. India maintains that this is the only

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position consistent with the assurance given by the Commission and the practice observed hitherto by the United Nations authorities of giving recognition to the sovereignty of the Indian Union and the State which derived originally from the Instrument of Accession and has since been embodied in the Constitution of India," [S/2783 and Corr. 1, para. 45.]

In other words, if we were to be asked to carry out any contrary decision, we should be scrapping our entire Constitution.

We also read the following in Mr. Graham's report :

"The Government of India maintains that the administration of this area would, under paragraph 3 of part II of the UNCIP resolution of 13 August 1948, vest in local authorities to be established or recognized for the purpose; to these local authorities under the same resolution only local administrative functions have been assigned. In the very nature of things such authorities can be in charge only of local law and order whether in the area or with reference to the case-fire line. To give them any armed force equivalent to-troops would not be consistent either with their status or with their functions and would be a violation of the sovereignty of the Union of India and the Jammu and kashmir State. In the very nature of things, therefore, these local authorities can be entrusted only with a civil armed force." [S/2783 and Corr. 1, para. 22.]

Later, the Government of India said in a memorandum forwarded to Mr. Graham :

"The Government of India are unable to agree to the retention of any military force in the so-called "Azad" Kashmir territory. Not only would this be contrary to the assurance given by UNCIP. India that the resolution of 13 August should not be interpreted, or applied in practice, so as to-bring into question the sovereignty of Jammu and Kashmir Government over the portion of

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their territory evacuated by Pakistan troops, or to enable this territory to be consolidated in any way during the period of truce to the disadvantage of the State, but the presence of such a force which, by reason of its association with the Pakistan Army, constitutes a link with that Army, would be a threat to the security of the State.

"...the Government of India consider that the question of local authorities has to be dealt with in the light of the assurances given to the Government of India by the United Nations Commission for India and Pakistan." [S/2967, annex VI, paras. 2 and 3.]

We regard the proposals, the assurances and the commitments made by the Commission—and these are not secret; they are part of the documents of this case—as proposals, assurances and commitments made by the Security Council.

I continue to quote from the Government of India's memorandum :

"For this purpose it is essential that local authorities should not be so evolved, nor so function in practice, as to bring into question the sovereignty of the Jammu and Kashmir Government over the evacuated territory or to let it be consolidated in any way to the disadvantage of the State. In the opinion of the Government of India this makes it necessary : (i) that the so-called "Azad" Kashmir Government shall not be allowed to function in this area either collectively or individually through their Ministers; (ii) that all officials appointed by the Pakistan Government shall cease to function; (iii) that no connexion shall be maintained between the local authorities and the Pakistan Government...." [ibid. para. 3]

All of these quotations are part of the record of this case and much of the position reflected therein is still the same today,

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Since this series of Security Council meetings began, evidence has not been lacking that responsible Ministers in Pakistan have been making provocative statements. Fortunately for us, the Foreign Minister of Pakistan is here in New York so he cannot be making speeches in Karachi. The following report appeared in the *Hindustan Times* on 5 November 1957 :

> "Mr. Yusuf Haroon, Pakistan's Minister for Kashmir Affairs, is reported to have told a public meeting on Saturday [I believe that was 2 November] that Pakistan itself 'has lost the spirit and the warmth which it had at the time of independence (partition) for getting Kashmir'...
>
> "Kashmir could not be got for Pakistan Mr. Haroon said [at a Muslim League ward meeting] through the help of foreign countries. Only if the people were prepared for action and sacrifices could it be had. If people are determined to get Kashmir there is no reason why they cannot succeed, as the example of the creation of Pakistan is very much before their eyes'..."

Meanwhile Sardar Abdul Qaiyum Khan, former head of Pakistan-occupied Kashmir, said in a statement :

> "The only alternative left for the Government of Pakistan would be to either go to war with India or withdraw its international commitments to maintain the cease-fire line and maintain order in 'Azad' territory..."

Thus, I have dealt with this question of demilitarization. Perhaps some specific proposals will be forthcoming here. We have heard some references to such proposals in private conversations and in lobby talk, and we have no doubt that there are numbers of draft resolutions in various people's pockets. No doubt, we shall be given some precise information in this regard.

I should like to conclude my statement today by summarizing the observations I have made.

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First, I would request the President very earnestly to take into account the facts that I have set forth, because it is a matter of real hurt to our people that on behalf of the people of Iraq, it should be stated that we would produce before this Council afterthoughts, spurious arguments, which have no foundation in fact. We would request the President to convey to the people of Iraq that the reflection which was made was an attribution of motives. We are quite prepared to recongnize the fact of military alliances, but we would ask to be allowed the freedom and luxury of believing in other international relations.

Our position is that the only engagements by which we are committed are the general rules of international law; our obligations under the United Nations Charter to defend the sovereignty of our country, not to interfere in other people's affairs and not to brook any interference in ours; and the obligations arising from the resolutions of 17 January 1948, 13 August 1948 and 5 January 1949. If we wished to be punctilious and very logical, it would not even be necessary to refer to the resolutions of 13 August 1948 and 5 January 1949. Morally speaking, it would be entirely correct for us to base ourselves on the resolution of 17 January 1948. For if neither we nor Pakistan is willing to carry out the very strict instructions and fervent appeals of the Security Council, the demands of human conscience and international law, not to commit aggression, then there is no value in any other commitments. If we wished to be strictly logical and punctilious—some people might use the word "obstreperous"—we really could base ourselves only on the resolution of 17 January 1948.

Even without sticking to that resolution, we are entitled to beg of each one of you—whether you are going to remain members of the Security Council or not—to see to it that the appeals made by the Security Council are not made a cover, a cloak or an instrument for further aggression. But if we turn to the position taken by Mr. Jarring, that what he is considering is the situation as arising from the enagements entered into —and I purposely use the word "engagements" because com-

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mitments arise only when commitments have been made by Pakistan—in the resolutions of 17 January 1948 and the supplementary resolutions of 13 August 1948 and of 5 January 1949, this last resolution has no existence whatsoever except in the context of the resolution of 13 August 1948. It is not an independent resolution, the Commission definitely says so. It is supplementary, subsidiary to the other resolutions, according to the Commission. Part III of the resolution of 13 August 1948 has never seen the light of day, although we tried to make it see the light of day, and when, in view of the kind of approach made to us from the other side, to the non-implementation of these things made it possible after three or four years for us to do something, we did not think it right to withhold from the peoples of Kashmir the benefits of economic, political or moral development, as far as it was possible for us to extend them. So it is that free elections take place, parliament sits, debates go on, newspapers function, universities exist and economic development goes on. Seventy thousand people went into Kashmir in the last holiday season, of whom at least 10 per cent were Europeans or Americans. No country which is shut off from civilization permits that. It is our position that these resolutions must be considered.

So, if we want to repeat the facts, today it is not only a question of removing what was put in there after 25 December 1948, when Pakistan agreed to the resolutions—we agreed to the resolutions—we agreed to them long before—it is also a question of not adding to it. I was surprised to hear my friend Sir Pierson Dixon say that the army is being modernized and that new equipment is coming in, but in the circumstances that obtain, unless we are to accept the implied proposition—which is inseparable in some minds—that we are two peas in a pod, we are self-respecting nation who obeys the dictates of international law. We have committed no aggression on any country we have dishonoured no bond, we owe no money to the British or anybody else which we will not pay, we have honoured every obligation, but on the other side is a country that invaded our territory and what is more stood up in this Council and told

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everyone that it had committed aggression and had invaded the territory of India to protect its frontiers.

Area we to be told that we are the aggressors ? We, who are the victims of aggression and who have responded to the appeals that have been made, we, who have carried out the principles of self-determination in the context exists, we, who above anybody else have carried the situation to extremes in respect of the vulnerability of our frontiers, in spit of the imperative necessity to protect our limited trade in the north ? Are we to be told we are to be placed on the same footing as the defendant, as the country that has committed repine and plunder, the country that has violated international law, the country which according to Sir Owen Dixon committed a breach of international law when it crossed the fronter ? It is not necessary to go so far back as Sir Owen Dixon. The resolution of 13 August 1948 lays down the sovereignty of the Jammu and Kashmir State.

All of us here are sufficiently familiar with the idea of the integrity of States to know that sovereignty in regard to a neighbouring territory is excluded except in the context of international authority. There was never any question here of two States disputing on the same territory. There were not two Jammu and Kashmir Governments to come before the Security Council; it was the Government of India which came here with a complaint that aggression had been committed on the territory of the Union in the area of Jammu and Kashmir and requested the Security Council to use its good offices to prevent bloodshed and to find a conciliatory settlement. Willy-nilly we have moved on to the position on agreeing that the ceasefire line exists, but it has been started very many times in Commission's reports that line is not a political boundary—otherwise we would not have gone in there. It was merely a matter of convenience, for the purpose of carrying on negotiations, that we spoke of the Pakistan side of Kashmir. There is no Pakistan side of Kashmir; the Pakistan side of Kashmir is on our side of the international frontier. As I said the other

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day, although I think my statement was misunderstood, we have no military forces and are carrying on no military operations of any kind there; we have only armed police in the whole place. After these ten years of going forwards and backwards, the Government of India appeals to the Security Council in the interests of the Charter, and in the interests of convincing the vast majority of peoples in India and in every other country in the world that what President Eisenhower said the other day about aggression is true about India as it is about any other country. After all, great countries have committed aggression and the United Nations has come down heavily on them. Why should there be any difference with another country ?

We seek the way of conciliation, the way of understanding, the way to a settlement of relations with our neighbour—I do not say a settlement of the Kashmir problem, because there is no problem. We seek greater stability in our area and the avoidance of unnecessary misunderstandings arising from such statements as those I have quoted which were made by the Ambassadors of Turkey and Iraq to their Governments. All that calls for the vacation of aggression in Kashmir. Ten years is a long time for a country to be invaded and still to to rest content in the faith that law will assert itself. The only thing that can destroy the force of law is a disregard of law, for the sake of expedience, by those in power. I am sure that will not be the case with members of the Security Council.

After we have submitted to you the circumstances in Kashmir I think I am entitled to say to you as a responsible Minister that I was in the place myself before I came here and we are interested in internal order, we are interested in good India-Pakistan relations and in communal harmony and more than all, strange as it may seem, we are anxious not to arouse in our people any kind of warlike feelings, because though we have an army we do not want to encourage it. We have played down the whole of this business of this new aggression in Kashmir. I have been in Kashmir, in the different parts of the State where these things have happened, and I am familiar with the investigations which have been made, and I would ask the

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Security Council to accept, as from a responsible representative of an accredited State, that we have used the utmost restraint. I wish to convey to the members of the Security Council who are close to us and to the Council as a whole that action taken without taking these matters into account may well be playing with fire.

Terrorism, incitement to violence, the use of money from another Government to create subversion, the use of its intelligence services, some of whose members are in our hands—and proceedings are being taken against them in public trials in India, and since we have separated the executive from the judicial, there is no direction from the Government itself—all these facts have to be taken into account. Therefore, we beg of the Security Council to take into account that this is not one of those routine discussions about a matter that, like a hardly annual, comes up every time. We are dealing with a problem concerning a country with a considerable population, with no desire either to proclaim or to assert its strength by the quantum of its arms or by talking in military terms, that does not believe that finally any settlements can be brought about by war, either short-term or long-term, because no country, however powerful, can be sure of the consequences of war.

We are also anxious that these developments should not lead to a deterioration in our relations with our close neighbours, such as our friends across the water—a few miles of it—in Australia or here or in other places. We are anxious that the peoples of Kashmir, only half of whom today have political rights, educational opportunities, the opportunity of a better way of living and of industrial development, should, as a whole people, be enabled to have all this. What is preventing that is the occupation and annexation. Therefore, it is not merely the performance of part I of the resolution of 13 August 1948, not merely the removal of the guns, not merely the removal of the "Azad" forces, and not merely the removal of the Pakistan army—because Pakistan can go forty to sixty miles across the frontier and come back again—but it is the process of de-annexation that would change the situation. Under what title,

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under what right, under what law, under what conception does Pakistan have any *de facto* or *de jure* authority in the territory it has taken from India and conquered by force? What answer are we to give to our people, what answer are we to give to ourselves in defence of the Charter?

Let us take for the sake of argument that we are a tyrannical or bad Government. If that were the case, we should not be the only one in the world. Let us say, for argument's sake, that we are an undemocratic Government. Let us say we are an inefficient Government. But there is nothing in the resolution that ever speaks about the question of sovereignty. At best, it is where future sovereignty should lie. Sovereignty means authority, nothing else.

There may be arguments as to how the future may be settled, but there has been no argument about the present state of affairs, which has its origin in possession, and out of possession, dispoliation has taken place. Therefore, de-annexation must take place. Part I, paragraph E of the resolution of 13 August 1948 must be implemented, there must be no more cries of "Jehad", no more cries of holy war, no more proclamations that the military alliances of other parts of the world are intended against us or on account of us, and no more threats to us from that quarter.

In this connexion, I have repeatedly stated about the military aid given by the United States of America to Pakistan, whatever its consequences may be—and the consequences are very onerous and very heavy for us—that we have accepted the motives so far as the United States is concerned. We are not challenging its motives. We accept the statement on the motives, not the correctness or otherwise, but the facts are that the weigh of these arms are a potent quantity in the impending of the development of our country. It is also a potent factor, if I may say so without impertinence, in the impending of the development of Pakistan itself, which is very necessary for us. It is standing in the way of the resolving of large numbers of problems which inherently have difficulties apart from any obstreperousness either they or we may possess.

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Therefore, in the consideration of this question at the next stage, the Security Council, in its wisdom, will take what steps it wishes to take, but it would not expect a country to come here as to Canossa and to surrender. No Government in India could surrender the sovereignty of any part of its territory. No argument can argue people into bondage, and that phrase must be familiar to my friend from the United Kingdom. We shall not be wanting in any step that does not sully our honour, does not touch our integrity, does not place us in the same position as the invader, and which does not call upon us to break faith with the peoples of India and the world.

I ask anyone—I do not use any stronger word than "ask"—friend or otherwise, to look into any of these documents, statements, assurances and memoranda sumitted by the Government of India, its Prime Minister or anyone else, and say whether each one of these documents does not breathe this sentiment, even up to the last day. Are you going to dismiss these as hypocritical? If that is so, then compare these statements with the performances on the other side.

It gives us no pleasure periodically to come before the Security Council at the behest of Pakistan. We have neither the energy nor the people to do this. It does not help at the other end, because it only creates unsettlement. There is no other problem—I say this in all conscience—not even any of those stomach-touching problems of our economic development, which so deeply touches the population of India from Cape Comorin to the Himalayas. Every class of society is deeply concerned and, I dislike saying this because much has been said about religion; no religious section of India is more disturbed by this business than are the Moslem populations of India, because they are patriotic Indians who have taken their part and who carry their burden and their responsibility for economic and political developments, and who have suffered imprisionment and suffered whatever there was to be suffered in the past. On looking back, the British Government was a comparatively liberal Government, even though it was unpleasanl at times.

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Therefore, there is no problem that so deeply touches our people. That is no excuse for breaking any kind of international law. We would not ask the Security Council to do so. We only seek that the complaints we have brought, the commitments made by the Security Council, the aggression by Pakistan, which is the reverse of the assertion of our sovereignty in the resolutions, shall be dealt with and that the assurancess shall be implemented, and that step by step we shall not be inched along into a position of subservience to aggression. I beg the Security Council not to be deflected from this path by the inability of the representative of the Government of India to present a case which should need no argument with the strength, the facility or the finesse that is required.

If, in the course of these submissions, I have made any observations relating to any other country, not one of them has any reference to their domestic policies, not one of them has any reference to be peculiar character of Governments or of individuals. Wherever we have been able to express our appreciation, we have done so.

We are sometimes a little rough with the United Kingdom —that is the only way we get on—but we are not half as rough as they are with us. We agree with a great part of Sir Pierson Dixon's statement, and a great part of it is animated by a desire that somehow or other, by a magic wand, this thing will be resolved. But I ask him, in the name of all his country's history and traditions, is it a solution if it has no justice in it, if it is a violation of the Charter, if it is something where we accepted the assurances given on behalf of this Council through Mr. Lozano, Mr. Korbel, or the American gentleman who was the Vice-Chairman? We did not look at their nationalities; to us they were the Security Council. They were honourable gentlemen performing international duties, and they made no reservations. And where an attempt has been made to establish that something was said to us that was different from what was said to Pakistan, I say that is a very sad thing to say, because that was not the case. In one matter, with regard to the disbanding and disarming of the "Azad" forces, there have been some contra-

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dictions, but those contradictions are easily solved because one must look at the last assurances. The assurances were given by the same people, and the last assurances are those given to the Government of India and communicated to Pakistan. What is more, in many cases, assurances were asked for by the other side which were not given.

If the Security Council really desires, as it does, to deal with this matter with justice, in consonance with its own principles, it will be necessary for it to go into the documents point by point. It is not as though, as the representative of Iraq said, we are reopening closed issues. In all respect, I submit that those who are reopening closed issues are those who try to justify annexation, because the issue of sovereignty is a closed issue. The resolutions are based on that. The right of defence is a closed issue. The fact that Pakistan has no place in Kashmir is a closed issue. That there are no two States of Jammu and Kashmir is a closed issue. We are not reopening them. It is those who by lack of knowledge or because they have been wrongly briefed are reopening closed issues, who are creating new issues out of going back on what are closed issues.

I should like someone not merely to say: We agree to a plebiscite, or to this or that or the other. Under what conditions? What about the sequence? We live in a world of time, and someone has said: If you analyse time it becomes a sequence in duration. You must take into account sequence: when a party is told that if so and so does something, then you have to do so and so, and if that party agrees, you cannot read a resolution upside down.

What is more, we have a lot of floods in Kashmir and the rest of India. In the early part of this year there were certain estimates with regard to the height of flood control arrangements. They came to X feet. These were calculations made over an average of twelve years ending three years ago. This is pertinent; this is not an anecdote. But the floods have been heavy. We have made new calculations on the averages of more recent years. It would be very foolish for us to try to stop

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those floods, basing the heights of our barriers on the calculations of the flood waters that are likely to come.

In 1947, Pakistan relied upon irregulars. Today, it does not have to rely on irregulars. In 1947, Pakistan had not taken the attitude that we were not to exist in peace and friendship. In 1947, Pakistan had not for seven years continuously refused to enter into agreement with India that all problems should be settled without war. In 1947, Pakistan had a different approach to the whole of this problem.

We think that, if the Security Council will use its good offices, will step back a little and throw its weight fully—as it desires to do, as it always does—on the side of commitments, of morality, of international law and of the Charter, it will find a solution. But no solution by which a country is called upon to disgorge its sovereign territory can be a solution. The mistake arises entirely from thinking that the State of Jammu and Kashmir is some foreign State that we have sought to annex. If we had gone to Jammu and Kashmir without accession, at the request of Sheikh Abdullah, under international law our position would have been morally, politically and legally indefensible. But we have not argued that. What appertains to Kashmir appertains to 560 other places in India which today have lost their identity in the mainland of another country. We are not going to unscramble these eggs. It may be a sin, but a pardonable sin, but, being a young country, there probably exists an expression of feelings in this way. All of you have a great deal to give away—we have very little. After all, I make this final appeal to you at this stage that the progress on this matter must proceed on the basis of the full vacation of aggression, which means de-annexation, the removal of everything that has come there from 20 August 1948, the stoppage of hostile propaganda, and some assurance which you or I can accept that this will continue.

Finally, there should be assurance that our relations are going to be settled on the basis of the United Nations Charter, and that the Security Council is concerned with the complaint

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that is before it, the complaint of aggression committed by Pakistan, which has been denied here totally but which, after all, is found in fact to be true. We do not ask for any condemnation; we do not ask for any strictures; we do not ask for any commendation. We do not even say: Leave us alone and we will fight it out.

I submitted to this Council on behalf of my Government the other day, irrespective of moral, legal, political and every right with regard to the cease-fire line, that our Government as at present constituted, our people, are not likely to be moved into any action which, however justifiable the assertion of a right, might lead to conflict—and conflict in any part of the world can lead to conflict in other parts of the world. We have had great patience with regard both to the cease-fire line and to the interior of our territory—I have not said anything about the rest of it because that is not before the Council and, with its experience, it is not necessary for us to bring it here. We are not, as a people, in a hurry to pursue mere logic and law at the expense of peace, and the appeal which we make to the Security Conncil in this matter is not a beginning appeal, is not an argument for mercy, for special treatment, for a partisan approach or anything of that kind, but for sheer justice, the application of agreements and what is necessary in the interests of stability, peace and order in our part of the world.

Mr. JARRING (Sweden): In my statement on the India-Pakistan question at the 798th meeting of the Council, I indicated that, in the opinion of the Swedish Government, certain legal aspeets of this question might usefully and at an appropriate time be referred to the International Court of Justice for an advisory opinion. I also said that my Government would be interested to learn the attitudes, in principle, of the parties to this suggestion. In his statement at the 800th meeting of the Council, the representative of India has asked me to let him know what these certain legal aspects are.

My Government has two questions in mind for an advisory opinion by the Court.

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The first question deals with the legality of the accession and is divided into three parts:

(1) Did the accession of the Princedom of Jammu and Kashmir to India become legally valid in virtue of the declaration of accession signed by the Maharaja in 1947?

(2) If this declaration did not constitute a definite accession, did it have the import of a legally valid, conditional accession?

(3) In the latter case, is the accession, as a result of the declaration by India on accepting the accession or for other reasons, conditioned by being confirmed through a plebiscite ?

The second question is the following: If a confirming plebiscite is a condition for the accession, to what extent have India and Pakistan assumed precise obligations in respect to the manner in which the plebiscite should be arranged and to the prerequisites for a plebiscite?

Mr. NOON (Pakistan): I have listened with close attention to the statements of the members of the Security Council, as well as to the lengthy dissertations made by the Defence Minister of India. There is little, if anything, that he has said that he has not said before and which has not already been answered. His interventions this afternoon and at the previous meetings of the Security Council seem to me to constitute a major attempt to confuse the issues in the Kashmir dispute. The precise issue before the Security Council is the demilitarization of the State of Jammu and Kashmir in order that a free and fair plebiscite may be held under the auspices of the United Nations, in compliance of the resolutions adopted by the United Nations Commission for India and Pakistan in 1948 and 1949, which guarantee the right of self-determination to the people of the State to determine their own future.

The representative of India has tried to confound world opinion, both in regard to facts, as well as law. He has tried to

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deflect attention from the central issue before the Security Council by raising controversies over matters which have nothing whatsoever to do with the questions of demilitarization and plebiscite. I shall refrain, at this stage, from being drawn further into a wordy warfare by arguing with the representative of India about his interpretation of international law on arbitration, sovereignty, paramountcy, accession and the question of succession, which have been argued *ad nauseam* and answered many times before. Nor will I enter into the comparative merits of the Pakistan and Indian Constitutions and the treatment by our two countries of religious minorities. I will not take up the time of the Council by trying at this stage to set the record straight on the many errors of fact and interpretation with which the representative of India has attempted to cloud the whole question. My reply to the various contentions made by the Indian representative is ready, but, as I have said, I shall refrain from making it now since it is my desire that the Security Council should proceed with considerations of the case. I reserve the right to do so later at the appropriate time.

My Government has a right to expect that the Security Council will not permit the reopening on any pretext of issues that are already closed. It is my Government's hope that the Security Council will proceed in accordance with the dictates of justice and equity to ensure that the obligations incurred by India under an international agreement are fully and speedily implemented and that the people of Kashmir are enabled to exercise their inalienable right of free expression of their will without fear and without further obstruction from any quarters.

Mr. Krishna MENON (India): If there are no other members of the Council who wish to speak, I should like to make a brief observation in reply to the representative of Sweden.

The PRESIDENT: I have no more speakers on my list, so the representative of India may proceed with his reply.

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Mr. Krishna MENON (India): There have been two sets of observations since I finished speaking, one from the representative of Sweden and the other from my friend from Pakistan. This is not the time to answer or to speak further on the statements made by the representative of Pakistan. As for trying to confound, I plead not guilty. My observations were addressed to the members of the Security Council. They are not easily confused.

My main purpose in speaking is to answer the representative of Sweden. As I said the other day, the Government of India does not turn down or turn a deaf ear to any counsel of conciliation, which is not affected by what I said before. We have today a slight claboration of what was in the mind of the Government of Sweden. We shall communicate this to the Government of India and, if it should so happen that the Government of Sweden considers that the appropriate time has arrived, we will give the answer.

I am sure that Mr. Jarring, the representative of Sweden, would least expect us to speak at an inappropriate time. Therefore, when the appropriate time arrives, we will be willing to answer the question. But I wanted to place on record that we have not said that an advisory opinion may not be sought. But there are certain conditions attached to it which I referred to last time, but for the present I would like him to communicate to his Government that the details that he has put before the Security Council were faithfully communicated; and so far as Sweden is concerned, it will hear about it through diplomatic sources or otherwise immediately or soon. At the appropriate time, so far as the Security Council is concerned, we will be prepared to answer.

176. *Text of the speech made by Mr. Noon (Pakistan) in the Security Council meeting No. 802 held on 15 November 1957.*

Mr. President, as I submitted the Security Council on the

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last occasion [801st meeting, para, 115], I would now proceed to comment more fully on what has been said during the course of the debate. I thank you, Mr. President, and the members of the Security Council for the consideration you have given to the statements I have so far made in regard to the India-Pakistan dispute concerning the future of Kashmir.

At the outset, I must express surprise that some of the members of the Security Council thought fit to raise any doubt about the implementation of part I of the resolution adopted by the United Nations Commission for India and Pakistan on 13 August 1948 [S/1100, para. 75]. In regard to part I, paragraph B, of this resolution, I have repeatedly submitted, so far as Pakistan is concerned, of military potential in the State of Jammu and Kashmir. On the contrary, there has been a substantial reduction.

The representative of India has himself conceded that there has been a considerable reduction in our forces, although the figures of military strength quoted by him from time have been contradictory. At one stage he said that the "Azad" Kashmir battalions had been reduced from thirty-five to twenty. That statement is contained in the verbatim record of the 795th meeting, held on 9 October 1957 [795th meeting, para, 91]. Almost in the same breath he added that the reduction had been from thirty to twenty battalions. Not long ago, on 15 February 1957, Mr. Krishna Menon solemnly informed the Security Council that the number of "Azad" Kashmir battalions had been increased to forty-five. That statement is contained in paragraph 58 of the verbatim record of the 769th meeting. Had there been any augmentation, the military observers who are on the spot and whose business it is to watch such matters would have made a report to this effect. No such report has been made because no augmentation has in fact taken place. In any case, as the representative of the United Kingdom has

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aptly pointed out, the removal or reduction of forces in implementation of part II of the resolution of 13 August 1948 should do away with any further problems about augmentation.

In regard to part I, paragraph E, of the same resolution, on which the representative of the United Kingdom has placed a far wider interpretation than the terms suggest, repeated appeals have been made by my Government to promote an atmosphere which would permit the peaceful holding of a plebiscite in the State of Jammu and Kashmir. Indeed, I need hardly assure the members of the Security Council of my sincere and earnest efforts in this direction.

The various statements which the Defence Minister of India has mentioned and which have been attributed to prominent personages in Pakistan were all made in connexion with Pakistan's policy of adherence to regional alliances, such as the South East Asia Treaty organization [SEATO] and the Baghdad Pact. These alliances are basically and entirely defensive in character. Their purpose certainly cannot be represented as that of advocating war with India. Nor have they any bearing on the Kashmir problem. I can quote just as many statements from Indian personages which are hardly conducive to good relations.

My Government has made every effort to maintain, and has succeeded in maintaining, a peaceful atmosphere throughout "Azad" Kashmir as well as in Pakistan. Of course, there have been expressions of great dissatisfaction in Pakistan over India's failure to reach a settlement of the Kashmir problem, but there has been no attempt anywhere in Pakistan to disturb the peace.

So far as occupied Kashmir is concerned, peace also prevails there, under the shadow of Indian bayonets, in spite of the alleged bomb explosions which are clearly being enacted by *agents provocateurs* for obvious purposes and have been followed

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by stage-managed trials. That this should happen just before the present meeting of the Security Council is significant. I have already categorically denied, and I repeat the denial, that Pakistan has any knowledge of the matter whatsoever. Moreover, I strongly repudiate the irresponsible allegation that I have personally had any contact with subversive elements in Kashmir. Such a charge is not in accord with the spirit of harmony.

Here I should like to point out that Sheikh Abdullah, the erstwhile Prime Minister of the Kashmir State, has been in continued detention for about four years without trial. Recently, his detention was extended by a further period of six months. The Security Council is seized of the Kashmir dispute, and I feel it my duty to appeal to members of the Council to do their utmost to bring to an end this grave injustice perpetrated on a patriot for no other fault than that he wants his people to decide their own political future.

To proceed : it is our firm contention that part I of the resolution adopted by the Commission for India and Pakistan on 13 August 1948 has been fully and faithfully implemented. This fact has been certified by the United Nations Representative for India and Pakistan. Mr. Frank P. Graham, not only in paragraph 29 of his third report [S/2611 and Corr. 1], but also in paragraph 44 of his fifth report [S/2967]. Mr. Jarring, in paragraph 16 of his report [S/3821], does not assert that part I has not been implemented. He merely says that the Indians say no. Mr. Krishna Menon misinterprets the position when he contends that Mr. Jarring has established that a deadlock has been reached because of the non-implementation of part I. The deadlock, according to Mr. Jarring, was the result of the Indian rejection of limited arbitration in regard to the determination of certain facts. An artificial deadlock has arisen because it suits the Government of India to create it—and for no other reason.

It is consequently a matter of much regret to my dele-

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gation that any note at all has been taken of the patently unfounded allegation of augmentation of forces or of non-implementation of part I of the 1948 resolution in other respects.

In his statement, the representative of the United Kingdom has attempted to maintain a delicate balance of praise and blame between India and Pakistan, and in doing so he has, I regret to say, done less than justice to Pakistan. It is a matter of some satisfaction, however, that the Security Council has addressed itself to the question of demilitarization preparatory to the holding of a free and impartial plebiscite under the auspices of the United Nations. We welcome the suggestion made by some members of the Security Council that Mr. Frank P. Graham should visit the sub-continent with a view to creating conditions that would secure full implementation of the two resolutions of the Commission for India and Pakistan.

The representative of the Soviet Union has stated [799th meeting, para. 12] that India's efforts towards the successive implementation of the agreements in the Commission's resolutions of 1948 and 1949, especially with regard to the withdrawal of troops, were frustrated consistently by Pakistan. The facts are to the contrary.

On this very point of the withdrawal of troops, a number of proposals—no less than eleven—were formulated by the Commission for India and Pakistan, the United Nations representatives, and the Security Council itself, to effect the demilitarization of the State of Jammu and Kashmir. All these proposals, without exception, were accepted by the Government of Pakistan, and all of them, again without exception, were rejected by the Government of India. I shall not tax the patience of the Security Council by repeating what I have already said on this subject on previous occasions.

The distinguished representative of the Soviet Union has pertinently asked, "Why is the question again being reopened ?" The answer is simple. The question required reconsideration by

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the Security Council at this particular time because India was attempting to complete the annexation of Indian-occupied Kashmir in defiance of the clear directive of the Security Council given in its resolution of 30 March 1951 [S/2017, Rev. 1]. This position the Security Council could not, and, in fact, did not, accept. On 24 January 1957 the Security Council reaffirmed the resolution to which I have just referred, and declared that :

> "...the convening of a Constituent Assembly as recommended by the General Council of the 'All Jammu and Kashmir National Conference' and any action that Assembly may have taken or might attempt to take to determine the future shape and affiliation of the entire State or any part thereof, or action by the parties concerned in support of any such action by the Assembly would not constitute a disposition of the State..." [S/3779].

These are the terms of the Security Council resolution of 24 January 1957.

Since that resolution was passed, India has taken further steps to annex the State of Jammu and Kashmir, as explained by me in my speech before this Council on 24 September last [791st meeting, paras. 47 to 62]. It was this action of the Government of India which prompted the Security Council, at our instance, to take up the matter again. The policy of the western Powers has had nothing to do with it.

The Soviet representative has further stated "that, India in accordance with the obligations it has assumed, has granted self-determination to the people of Kashmir" [799th meeting, para. 12] What are these obligations ? These obligations are based, as the Soviet representative has himself admitted, on agreements achieved and on the resolution adopted by the United Nations Commission for India and Pakistan on 13 August 1948 [S/1100, para. 75] and later developed in the resolution of 5 January 1949 [S/1196, para. 15]. I submit that

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those resolutions are complete and lay down meticulously the procedure to be adopted for the purpose of ensuring free expression of the will of the Kashmir people. This procedure has been completely disregarded by India. The convening of the so-called Constituent Assembly as well as the holding of the so-called elections were entirely contrary to the letter and spirit of the obligations voluntarily accepted both by Indian and Pakistan.

In regard to the Constituent Assembly, I may add that, Sir Benegal Rau, the representative of the Government of India, officially informed the Security Council at its 533rd meeting that :

> "So far as the Government of India is concerned, the Constituent Assembly is not intended to prejudice the issues before the Security Council, or to come in its way" [533rd meeting, para. 19].

Again, at the Security Council's 536th meeting, Sir Benegal Rau said :

> "Will that Assembly decide the question of accession ? My Government's view is that, while the Constituent Assembly may, if it so desires, express an opinion on this question, it can take no decision on it" [536th meeting, para. 23]

These are official statements made by the Government of India to this august body.

So far as the recent elections in the State are concerned—which, according to Mr. Menon "were conducted in India under rules and conditions which would be an honour to any country"—I can do no better than to quote a dispatch of the correspondent of the *New York Times* who was in Srinagar at the time of the elections. He stated :

> "Elections in Indian Kashmir have been decided in favour of the Government, without putting a single voter to the

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> trouble of casting a ballot. There are several interesting circumstances that seem to make the proceedings in Indian Kashmir an exception to the general free and fair elections that have been taking place throughout India."

I have already spoken at length about these rigged elections. We must, therefore, challenge the inaccurate conclusion drawn by the distinguished representative of the Soviet Union, namely, that the people of Kashmir have definitely settled their own destiny in the sense that Kashmir shall be an integral part of the Union of India.

If the Security Council would now permit me I should like to point out some of the more obvious irrelevancies and inaccuracies which have appeared in the statements that the Defence Minister of India has made before the Security Council. I shall only limit myself to the main points. This does not mean either that we accept the validity of any of the other arguments used, or that we in any way subscribe to them.

The representative of India is never tired of repeating irrelevant arguments about Pakistan's military assistance agreement with the United States and its defensive alliances, specifically SEATO and the Baghdad Pact. These alliances, according to him, constitute a change of circumstances which, he contends, justify denial of the right of self-determination to the people of Kashmir.

Let me follow the example of the representative of India, and quote from one of his own countrymen, a distinguished Indian writer of today. In an illuminating article contributed to *The Times* of London of 25 August 1954. Mr. Nirad C. Chaudhuri gave the following analysis of the outcry in India against Pakistan's alliance with the United States :

> "There is a feeling all over India, the more painful because it cannot be admitted, that the country has been check-mated in the most vital moves of its foreign policy and

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> will have to acquiesce in the nullification of of the greatest achievement of Indian diplomacy since independence. It is the political and military isolation of Pakistan...Even now India is not reconciled to the existence of Pakistan, and any concern that may exist in the west about the relations between the two countries will never go beyond well-intentioned but perfectly futile platitudes if it does not recognize this fact."

Here, then, is the real reason for the endless repetition by India of baseless charges against Pakistan in regard to her defensive alliances—the failure of Indian diplomacy to bring about the political and military isolation of Pakistan. No doubt, a strong, self-reliant Pakistan, allied to other nations in self-defence, will not be so acquiescent in the reassertion by her larger neighbour of that hegemony which Britain, at the height of her imperial power, exercised in Asia. On the other hand, a weak and isolated Pakistan would be no serious impedimedt to the achievement of chauvinistic aims, nor would she trouble the conscience of the United Nations as a constant reminder of its duty to redeem its unfulfilled promise of self-determination to the long suffering people of Kashmir.

The representative of India has further made the surprising contention that India is the legitimate and sole successor of British authority in India, and the only inheritor of the rights and liabilities of the former Government of undivided India. The correct position is that under section 1, sub-section (1) of the Indian Independence Act of 1947, as passed by the British Parliament "two independent dominions" were set up in the sub-continent. One dominion retained the old name of India. The other was named Pakistan. Further, in sections 1 to 5 and 9 to 11 of the same Act, there are clear references to "new dominions", "each of the new dominions" and "both the new dominions"—I am quoting from the Act. Therefore, the Independence Act of the British Parliament, the very Act which according to Mr. Krishna Menon confers the right and title to independence, makes it clear beyond doubt that both Pakistan and India, and not India alone, are successor Governments.

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Here, for the benefit of my friend, the Defence Minister of India, I should like to quote to the Council the actual wording of this Indian Independence Act. The Act was passed by the British Parliament in conferring freedom on India. Here is the Act in my hands.

The preamble is as follows :

"An Act to make provision for the setting up in India of two independent dominions, to substitute other provisions for certain provisions of the Government of India Act, 1935, which apply outside those dominions, and to provide for other matters consequential on or connected with the setting up of those dominions."

Section 1 reads :

"*The new Dominions*" (not the Dominion of India, alone).

"(1) As from the fifteenth day of August, nineteen hundred and forty-seven, two independent Dominions shall be set up in India, to be known respectively as India and Pakistan.

"(2) The said Dominions are hereafter in this Act referred to as 'the new Dominions', and the said fifteenth day of August is hereafter in this Act referred to as 'the appointed day'."

In view of these very clear provisions of the Act, it needs a very fertile imagination to argue that India is the only successor to the British authority, and not Pakistan. This conclusion is further reinforced by the fact that in the United Kingdom Government's statement of 3 June 1947, announcing the plan for the transfer of power, there are clear references in paragraphs 16, 17, 19 and 20 of the statement to "two successor authorities". This view has received support from the Privy Council ruling in the case of the High Commissioner for India *v.* Lall in 1948. The Privy Council held that by virtue of

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section 15 of the Indian Independence Act, the High Commissioner for India, as well as the High Commissioner of Pakistan, should be treated as appellants in place of the Secretary of State for India. Thus the Act itself, the "Indian Independence (International Arrangements) Order" of 1947, as well as judicial rulings, all show that both Pakistan and India are co-successors to the British Government, and that British India was divided into two successor States.

In accordance with the "Indian Independence (International Arrangements) Order", we have also inherited the rights and obligations flowing from the treaties and international agreements to which undivided India was a party.

The representative of India has more than once put forward the proposition that as the successor State, India had the obligation to go to what he cells the rescue of Kashmir if the Maharaja had not acceded to India. He has sought to base this claim on 150 years of British practice in India; in other words, on what has been called the doctrine of paramountcy.

I should like to point out that with the termination of British rule in India paramountcy over the Indian States lapsed under section 7 of the Indian Independence Act. India, therefore, had no right of intervention in Kashmir. But if it is claimed that paramountcy did not lapse, even then paramountcy devolved not on India alone but also on Pakistan as a co-successor. Indeed, Pakistan, by virtue of the standstill agreement executed in 1947 by the Maharaja of Jammu and Kashmir with the Government of Pakistan, was recognized as the sole successor of the British Government of India in so far as the rights and obligations of this Government in relation to the State of Jammu and Kashmir were concerned.

What follows then ? The paramount Power for 150 years had built up a tradition of intervention in the affairs of the Indian Princes in cases of tyranny and misrule provoking popular rebellion. The tyranny of the Maharaja of Kashmir had

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provoked a rebellion of his subjects in 1947, and if Pakistan had intervened in the State to put an end to his tyranny, the doctrine of paramountcy, on Mr. Krishna Menon's arguments, would have justified this intervention as an act of the paramount Power in the exercise of its paramountcy over the State of Jammu and Kashmir. So much for this doctrine of paramountcy.

I hope the representative of the United Kingdom has taken careful note of the representative of India's claim that his Government is the heir and successor to British Interest in the Persian Gulf. The Sultanates of the Persian Gulf, if they wish to preserve their freedom, should, in their own interest, give deep thought to the danger to which their freedom stands exposed.

The charge of aggression against Pakistan has been made by India on previous occasions in the Security Council and has again been repeated. It has been fully answered in the past. It is Pakistan's contention that aggression has been committed by India, not only in Kashmir, but also in Junagadh, Manavadar, and Mangrol, to say nothing of Hyderabad, in size as big as France.

The Security Council, in the words of Sir Pierson Dixon, has not "felt able to pronounce on the Indian case on this aspect of the question" [797th meeting, para. 10] because in the words of the representative of Australia, "pronouncements on such issues would not be likely to provide a solution of the Kashmir problem." [798th meeting, para. 5] Mr. Walker goes on to say : "...we have not made any pronouncement at all on this matter because we do not believe that it would be helpful to do so." [*ibid.*, para. 7.]

The representative of China made the position still clearer when he said at the 767th meeting :

> "There never was a proposal made dealing specifically with aggression. In fact, there was no systematic or serious consideration of that charge and of the counter-charge of

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aggression. The members of the Council, without consultation, all came to the same conclusion that the charge of aggression should be by passed. That charge was never taken up . . . never even given serious consideration; I believe it was very wise of the Council to by-pass that charge." [767th meeting, para. 284].

The representative of India has tried to make moral and political capital out of the fact that India came as a complainant to the Security Council against Pakistan. He ignores the fact that Pakistan has also made a complaint to the Security Council against India. Mr. Krishna Menon says that Pakistan is a defendant and that therefore it does not stand on the same footing with India. I would like to know if there is any presumption of law in favour of a complaint, just because he is the first to come out with a complaint. It is a common experience in courts of law that the guilty party turns complainant in order to fasten the guilt on its opponent and, thus, to create for itself a presumption of innocence. This is precisely the case in regard to India's complaint to the Security Council. Having committed aggression against Junagadh in spite of its accession to Pakistan. India rushed to invade Kashmir and to seize it by force under the cover of a fraudulent accession.

If the Security Council considers it necessary to go into the question of aggression, the Pakistan delegation must insist that all the transactions in connexion with the accession of Indian States, pending before the Security Council, and not only one single case of Kashmir, must be investigated and pronounced upon.

In other words, the principle of *res gestae* in all its implications must form the basis of the determination, after taking into full consideration all essential conditions relevant to the question of accession, such as the condition that, in deciding upon accession to India or Pakistan, the ruler of a State should take into account geographical contiguity and the wishes of his people. In other words, the related complaints before the

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Security Council must be examined together and pronounced upon on the basis of a single, not a double, standard of morality or judgement.

Another legalistic contention of the representative of India is that self-determination took place when accession took place; that the so called "accession" was final, therefore, the State of Jammu and Kashmir is an integral part of the Indian Union, and the Constitution of India does not permit the State to secede from India.

If self-determination took place when accession took place, as stated by Mr. Krishna Menon, then what is the meaning of self-determination to which India has pledged itself under the resolutions adopted by the Commission for India and Pakistan ? I would beg the members of the Security Council to pause and reflect on this astounding pronouncement. Here we have the thesis that the right of self-determinatton, which according to the Charter of the United Nations is vested in the people, is to be exercised by a despotic ruler. Such a proposition, coming as it does from a member of the Government of a country which proclaims itself to the world as a democracy, only exposes the political and legalistic extravagance to which the representative of India has been pushed by the logic of his country's inconsistent and indefensible actions.

If such is the case, may I ask whether self-determination took place when Mangrol and Manavadar acceded to Pakistan ? Did self-determination take place when Hyderabad chose not to accede to either India or Pakistan ? By what rule of logic, law, morality or justice were these territories invaded, occupied, annexed, and their very existence wiped out by India ? Why does not India vacate its multiple aggression in these territories ? We have been told by the representative of India that Pakistan must come before this Council with its hands clean. What precisely is the colour of India's hands ? We are told by the representative of India that, if Pakistan demands equity, it must give equity. Does India, which demands equity, give

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equity ? There cannot be a double standard of conduct—one standard for India, and quite another for Pakistan.

The legalistic argument of one country being an integral part of another against its will and consent is familiar in the halls of the United Nations. Likewise is the argument that the constitution of one's country does not permit a people in bondage ever to escape from political subjugation. We have heard from the representative of India long dissertations on the federal nature of the constitution of his country and how its provisions prevent India from carrying out its international obligation to permit the people of Kashmir to exercise their right of self-determination.

Let me quote to you, in this conexion, a rule of international law of a binding character, which has a direct bearing on this point :

> "Every State has the duty to carry out in good faith its obligations arising from treaties and other sources of international law, and it may not invoke provisions in its constitution or its laws as an excuse for failure to perform this duty." [General Assembly resolution 375 (IV), annex, article 13.]

This rule appears as article 13 of the Draft Declaration on Rights and Duties of States adopted unanimously on 6 December 1949 by the General Assembly of the United Nations at its fourth session.

Article 13, which I have quoted, was drafted by the members of the International Law Commission. The Vice-Chairman of this Commission in 1949, when this article was drafted, was a distinguished Indian jurist, Sir Benegal Rau, who represented his country before the Security Council in this very Kashmir dispute.

The latter part of the article, which I quote again : ". . .it may not invoke provisions in its constitution or its laws as an excuse for failure to perform this duty" is based on the advisory

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opinion of the Permanent Court of International Justice delivered on 4 February 1932 in the well-known case of the "treatment of Polish nationals and other persons of Polish origin or speech in the Danzing territory". The Permanent Court held as follows :

> "It should however be observed that, while on the one hand, according to generally accepted principles, a State cannot rely, as against another State, on the provisions of the latter's Constitution, but only on international law and international obligations duly accepted on the other hand and conversely, a State cannot adduce as against another State its own Constitution with a view to evading obligations incumbent upon it under international law or treaties in force."

No kind of legalistic pretexts on the part of India, based on the Indian Constitution, can absolve it of its solemn international obligation assumed under the two resolutions of the Commission for India and Pakistan. Neither can any specious argument advanced on the basis of the sovereignty of India absolve it from this overriding obligation. For in article 14 of the self-same Draft Declaration on Rights and Duties of States we have the following rule of international law enunciated by the International Law Commission :

> "Every State has the duty to conduct its relations with other States in accordance with international law and with the principle that the sovereignty of each State is subject to the supremacy of international law." [General Assembly resolution 375 (IV), annex, article 14.]

The right of the people of Kashmir to self-determination, recognized by virtue of India's obligations under the resolutions of the Commission for India and Pakistan, remains unimpaired by any provisions in India's own constitution, and irrespective of the nature of the so-called accession to India.

And yet the representative of India has called the resolu-

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tion adopted by the Commission in 1948—I quote his own words—"a mere scroll." The world is familiar with another infamous phrase in history—the description of a treaty as a mere "scrap of paper". Is the Charter of the United Nations also a mere scroll, a scrap of paper ?

Mr. Krishna Menon argues that, since the Commission's resolutions make mention only of arrangements for the future status of the State of Jammu and Kashmir, the present status of Jammu and Kashmir entails recognition of the total authority of the Union of India. He seems to forget that the present situation in the State is the subject of a dispute between India and Pakistan of which the Security Council is seized. This fact has been aptly brought out by the representative of the Philippines who stated :

> "It is clear that any claim by one party or the other that any portion of the State of Jammu and Kashmir is Indian or Pakistan territory would be highly prejudicial to the implementation of the two resolutions adopted by the Commission and accepted by the two parties." [798th meeting, para. 31].

Assertions of sovereignty, or lack of it, of India or Pakistan over Kashmir, I must repeat, are inadmissible in view of the whole approach and basic concept of the Commission's resolutions. Though the representative of India has indulged in diffuse argumentation on the point, I find from the record of his speeches that he is not unaware of this concept. It of course suits him to remember this at one time and to forget it at another, but he indicated the other day that he understands it fully.

At the 799th meeting of the Security Council, when replying to the remarks made by the representative of the Philippines, Mr. Krishna Menon quoted from the resolution of 13 August 1948, and discussed some of its clauses. When doing so, he delivered himself of the following remark :

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> "So it has nothing to do with discussing the present status at all. It is a matter of a peace arrangement to determine what can be done about the future" [799th meeting, para. 155].

I must draw the attention of the Council to these words of the Indian representative which fairly state the intention of the Commission's resolutions and invalidate much of the interpretation that, at other times, he seeks to impose on them. These resolutions, in his own words constitute, a "peace arrangement"; that is, they are concerned with the settlement of the dispute and not with the adjudication of claims and counter-claims. In view of this, they can be cited only as imposing certain obligations on the two parties for the settlement of the dispute; they cannot be cited as granting any recognition, express or implied, to any claim of sovereignty.

The Commission's resolutions embodied a procedure for the settlement of the dispute, and the responsibility for implementing this procedure naturally developed on whichever entity was physically so situated in the State of Jammu and Kashmir as to be able to shoulder it. In other words, the criterion for placing these obligations on a party was not the party's juridical title, but its physical existence and capability. The resolutions do not contain any recognition of sovereignty; they only contain recognition of actual facts and a consideration of how concretely demilitarization could be effected and the machinery for the plebiscite introduced.

I would now like to turn to some of the arguments put forward by the representative of India—arguments allegedly based on the rules of international law—to justify the obstructive posture of his Government to every suggestion, offer or proposal put forward by the mediators of the United Nations in the interests of a peaceful and just settlement of the dispute. Every time such an attempt is made, all kinds of pseudo-legal and irrelevant arguments are adduced by India to mislead and confuse. The latest proposal to be treated by Mr. Krishna Menon in this fashion is the Jarring proposal to refer the

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question of implementation of part I of the resolution of 13 August 1948 to arbitration. Mr. Jarring proposed that India's allegation about the non-implementation of part I be put to arbitration or arbitrators to determine the facts, so that, if they found that the implementation of part I was incomplete, they would indicate to the parties the measures to be taken to arrive at full implementation. What was India's response? The Security Council has been treated to a misleading and confusing interpretation of the principles of international law.

I would submit that the contention of the representative of India that the Jarring proposal of arbitration affects the sovereignty, the vital interests, the honour and integrity of India, does not bear scrutiny. Mr. Jarring did not propose that the destiny of the people of Jammu and Kashmir should be disposed of by arbitrators. He did not propose that the territory of the State should be awarded to Pakistan or to India by the arbitrators. He did not propose that the Indian claim to sovereignty over the State should be left to the will of the arbitrators. He merely proposed that the Indian contention of non-implementation of part I of the resolution should be submitted to fact-finding by the arbitrators.

To this proposal, the representative of India reacted as follows :

> "There is no case in the whole gamut of international law. . .where a matter so wide and so intimately connected with a country's integrity, a matter involving so much complexity, has been subjected to arbitration." [795th meeting, para. 61.]

The question of the enforcement of part I of the resolution is by itself neither intimately connected with India's integrity nor does it involve complexity. On the contrary, it is a very limited issue.

I trust that the members of the Security Council will not consider that the Covenant of the League of Nations, one of the most impressive statements on rules of international law, is

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outside the gamut of international law or that it is a negation of all the principles of international law. I quote from Article 13, paragraph 2, of the Covenant which lays down the arbitral functions of the League of Nations, namely, that disputes:

> ". . .as to the existence of any fact which if established would constitute a breach of any international obligation . . . are declared to be among those which are generally suitable for submission to arbitration or *judicial settlement*".

The Jarring proposal on arbitration was confined precisely to such an issue; namely, the question of the existence of facts which would establish the breach, if any, of the international obligations of both India and Pakistan fully to implement part I of the resolution of 13 August 1948.

In the light of the above authorities, and I can cite others, it is not necessary for my delegation to offer further proof that the arguments put forward by the representative of India in regard to sovereignty, intergrity, honour or vital interests, have been expressly ruled out by international law as valid contentions in the case of the Jarring proposal.

The representative of Sweden has propounded two questions for possible reference to the International Court of Justice for an advisory opinion, and has asked whether India and Pakistan are prepared, in principle, to consider such reference at the proper time.

In our view, the issues involved in the Kashmir dispute are of a political, rather than a juridical nature. In a strict sense, the questions raised by the representative of Sweden are irrelevant to the specific problem which is at present before the Security Council, namely, the implementation of the Commission's resolutions whereby both India and Pakistan are engaged. Any reference to the International Court of Justice will merely delay the settlement of a long-standing dispute and such dealy, I beg to submit, might endanger peace. In any case, there

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appears to be no guarantee that any advisory opinion given by the International Court of Justice will be accepted or enforced. I have no doubt, however, that my Government will give due consideration at the appropriate time to the suggestion made by the Swedish representative.

Mr. Krishna Menon's demand for what he calls the de-annexation of the territory of "Azad" Kashmir has no validity, since there has been no annexation of that territory. So far as the Government of Pakistan is concerned, Kashmir is a separate territory whose future relationship with Pakistan is still to be decided. Section 203 of the Constitution of Pakistan says :

> "When the people of the State of Jammu and Kashmir decide to accede to Pakistan, the relationship between Pakistan and the said State shall be determined in accordance with the wishes of the people of that State."

There has been no annexation whatsoever of the State of Jammu and Kashmir either in law or in fact.

The reference by the representative of India [801st meeting, para 46] to section 1, clause (2), sub-clause (*c*) of the Constitution of Pakistan, which reads: ". . .the territories which are under the administration of the Federation but are not included in either Province" and his conclusion that the article defines "annexation'. is wholly unwarranted. The clause referred to by the representative of India is a formal clause included in many written constitutions of the world. I shall quote from the Constitution of India its section I, clause 3, sub-clause (*c*) which states that the territory of India shall comprise "such other territories as may be acquired". Does this imply annexation ?

India has demanded that the administration and control of the northern area should revert to the Government of the State of Jammu and Kashmir, and that responsibility for the defence of the area should be assumed by the Government of India.

Pakistan has, on the other hand, contended that under

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part II, section A, paragraph 3, of the 1948 resolution the northern area should continue to be administered by the "local authorities", and that under part II, section B, paragraph 2, of the same resolution the Indian and State armed forces must remain on their own side of the cease-fire line.

Pakistan's stand has been upheld by the Commission which said, in its third interim report to the Security Council, that ;

> "The situation in the northern area to-day is such that the posting of garrisons by the Indian Army at any point beyond those which are now held by it would result in an extension of military activity by the Government of India, . . ."

and the Commission concluded :

> "Until such time as the conditions envisaged in the resolution of 5 January [1949] have been created and normal life begins to return to the State of Jammu and Kashmir, the [cease-fire] line which is to-day a guarantee against a resumption of hostilities should be scrupulously observed by the Governments of India and Pakistan and the opposing forces should remain behind it."

There is no justification for the Indian contention that the "Azad" Kashmir forces should be disarmed or reduced at this stage. The language of the Commission's resolutions is far too clear to permit of any such interpretation.

At the meeting of the United Nations Commission with the Foreign Minister of Pakistan on 31 August 1948, the Chairman of the Commission "asked the Foreign Minister to take note of the fact that even after the withdrawal of the Pakistan Army the 'Azad' Forces would still muster thirty-five battalions of armed people, who were not asked to disarm or withdraw".

In paragraph 2 (*c*) of its letter dated 19 September 1948,

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the Commission assured the Foreign Minister of Pakistan that its resolution of 13 August 1948 did not contemplate the disarmament or disbanding of the "Azad" Kashmir forces, as will be seen from paragraph 108 of the Commission's first interim report [S/1100].

On 28 April 1949, the Commission wrote to the Government of India :

> "The Governtment of India will understand that the Commission cannot deal at this stage with the question of disbanding and disarming the "Azad" Kashmir forces since it did not fall within the purview of part II of the resolution of 13 August [1948]."

I shall now deal with certain subsidiary points referred to by the representative of India in his statements. Mr. Krishna Menon has said, while speaking of Kashmir refugees :

> "The present situation is that 450,000 Mulism refugees, refugees of the Islamic religion, have returned from Pakistan-occupied Kashmir and have been rehabilitated by the State Government of Jammu and Kashmir.
>
> "It would be interesting to know how many authentic figures of that character can be produced by the other side" [796th meeting, paras. 7 and 8].
>
> In almost the next sentence, he said :
>
> "The total number of Kashmir Muslims, who migrated to Pakistan at the beginning of the trouble, was not 500,000, as has been said, but 208,818. These are the figures" [*Ibid.*, para. 8].

I am afraid I have been unable to follow these so-called "authentic figures". I leave it to the Security Council to appraise their authenticity.

Again, it is absurd to suggest that the Mangla Dam, which

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is a nation-building development project, and which is being carried out by the "Azad" Kashmir Government with the assistance of the Government of Pakistan, constitutes "consolidation" or "augmentation" of the so-called "aggression". Of far more significance, in this context, is the construction of the Banihal Pass Tunnel, to which the Indian Defence Minister has himself referred, and which has been constructed not for the alleged purpose of exporting fruit from Kashmir but for the purpose of providing a major strategic highway for Indian tanks and troops to move into the Kashmir Valley throughout the year as the 17,000 feet high Banihal Pass is snowed up during the winter.

One more misstatement of Mr. Krishna Menon should, incidentally, be referred to. While claiming that the conversations between the Prime Ministers of India and Pakistan on the Kashmir issue were not terminated by India, Mr. Krishna Menon quoted [796th meeting para, 83] from a letter from the Prime Minister of Pakistan dated 21 September 1954, which reads as follows :

> "In the circumstances I am bound to conclude that there is no scope left for further direct negotiation between you and me for the settlement of this dispute. This case, therefore, must revert to the Security Council."

I shall merely cite from the paragraph preceding the one cited by the Indian representative :

> "Here I will mention only one further matter which makes me doubt whether you wish to settle this dispute at all. Since January in practically every letter of mine I have asked for a resumption of negotations to resolve the preliminary issues that were holding up further progress. You have steadfastly refrained from agreeing to it."

Let the Security Council draw its own conclusions.

As regards the question of genocide, to which references have been made, we have never asserted that India is at the

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moment indulging in genocide. In his statement to the Council on 25 October, Sir Pierson Dixon said that the deplored charges like that of genocide being made in the Security Council [797th meeting, para. 5]. No such charge has been made by us. But, there has been a latent threat of genocide in the various statements of the India leaders when speaking of the potential consequences of a plebiscite in the State of Jammu and Kashmir.

As a illustration, I would like to quote what Mr. Krishna Menon himself said in this Council on 24 January 1957 :

> "With an idea of the problem of the refugees, the Council will be able to see that there is a steady stream coming from the side, with which we have to deal, but any change in this situation, any stirring up of trouble here, any attempt to unsettle conditions today, would start a scare and an influx of refugees. The first thing that happens when there is an influx of refugees is the slaughter of populations of the community in the country concerned." [764th meeting, para. 121.]

The Prime Minister of India was still more specific on this point when, speaking in Madras on 31 January 1957, he said.

> "We have always stressed that elections or a plebiscite must be on political and economic issues. We do not want to have communal riots there, and call it a plebiscite, or a tearing campaign based on religious bigotry and rousing people's passions...I do not want Kashmir in the name of a plebiscite to be the scene of fratricial was which would spread to India."

It is statements such as these that prompted me to warn the Security Council on 24 Septmber [791st meeting] that an atmosphere of instability was being created by Indian leaders by suggesting the possibility of wholesale slaughter—a possibility which, I maintain, will never become a reality, if the Govern-

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ment of India sincerely desires to maintain law and order in the country with all the resources at its command. It is those who suggest threatening possibilties of this kind whose conduct should be deplored by Sir Perison Dixon and not the conduct of these who bring the facts to the notice of the Security Council.

In his statement at the 796th meeting of the Security Council, the representative of India thought fit to condemn the Government of Pakistan for its attitude towards its minorities. He also characterized the Pakistan Constitution as "one of the most peculiar documents of modern times", quoting some misinformed comments about the so-called "theocratic" foundation of our State [796th meeting, para. 19]. In contrast, he claimed that under the Indian Constitution secularism, complete toleration and freedom of thought obtained. I have no desire to prolong my intervention by citing all the claims. However, order to set the record right, I cannot pass over his charges in complete silence.

May I remind him that, since the Delhi Agreement of April 1950, more than 400 communal riots involving Hindus and Moslems have taken place in India, and that not a single such incident took place in Pakistan durring this period. This record speaks for itself. Let these facts, not my words, refute the charges brought against Pakistan of inciting religious fanaticism and of creating in the minds of the religious minorities a state of insecurity and fear.

What are the minorities in India ? In an article entitled "Hindus Battling with Christians" which appeared in the London *Observer* in November 1955, it was stated :

> "In Madhya Pradesh State" – one of the States of India— "missionaries are being investigated by a government committee which is providing a forum for extremist Hindus to make unsubstantiated accusations against Christianity. They say it is the organ of foreign imprialism, American imperialism in particular."

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The report of the government committee moved the Catholics of India to lodge strong protests against what they characterized as "baseless and reactionary" recommendations.

I shall refrain from giving other instances of a similar attitude on the part of the authorities in India toward the religious minorities.

In regard to the nature and spirit of the Pakistan Constitution, I would be happy to furnish, for the benefit of the representative of India, testimony of greater weight and authority than that which he has cited to ridicule it. In particular, I would invite his attention to editorial comment in the *New York Times* of 5 March 1956 and in the *Washington Post* of 6 March 1956, stating that the Constitution of Pakistan was based on the sovereignty of the will and consent of the people, and guaranteed the rights and freedoms of the religious minorities.

Here I should like to mention that the Constitution of Pakistan is completely secular. There is no distinction as regards voting, property, freedom of press or freedom of speech, between persons of one religion and persons of another religion. Religious freedom is guaranteed not only by our Constitution but by the Holy Koran, and the only provision we have in this regard is that the President of the Republic of Pakistan must be a Muslim. Every other provision of the Consititution is secular and applies to all the communities without distinction as to religion. I can quote instances of European Constitutions which provide that the head of the State has to be a Christian and not only that but has to belong to a certain church. Therefore, if we have laid down a rule that our President is to be a Muslim, there is nothing wrong and nothing unprecedented about that. In every respect, members of all religions are treated alike under the Constitution of Pakistan. I ask Mr. Krishna Menon to point to one clause in our Constitution which makes a distiction between people of one religion and people of another religion.

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The Indian representative has tried to answer the for "demands", as he chooses to call them, made by me in my earliest statement [791st meeting] and says : "All of them are violations of the Charter" [796th meeting, para. 117]. I would request the Security Council to consider the demands that I had made. All that I had asked in my proposals was the implementation of the international agreement that subsists between India and Pakistan for deciding the question of accesion of the State of Jammu and Kashmir to India or Pakistan. The Security Council and the parties to the dispute agree that the demilitarization of the disputed territory is a prerequisite to the holding of the plebiscite. What would, therefore, be more natural for the Security Council to do than to take up the consideration of the dispute from where it had left it, namely, on 23 December 1952 ? Mr. Krishna Menon calls this a violation of the Charter.

Other proposals I made related to the withdrawal of the forces of India and Pakistan or the withdrawal of our own troops on certain conditions. Again Mr. Krishna Menon calls this a violation of the Charter.

I had explained at length on the last occasion that the object of the induction of a United Nations force into Kashmir was to create confidence in the minds of the two parties and to enable them to proceed without trepidation to the discharge of their obligations under the international agreement. As soon as a United Nations force is stationed in Kashmir, both parties must, in strict accordance with the terms of the agreement, start withdrawing their forces. As the representatives of China and Cuba have suggested, what could be fairer than that ? But Mr. Krishna Menon call this also a violation of the Charter.

Then Mr. Krishna Menon gives a long list of his own demands which are quite contrary to the assurences given by the Commission for India and Pakistan to the Government of Pakistan and also contrary to the Commission's resolutions. But I shall not dwell on them, especially as these points have often been made here before, and replies to all of them are

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already on the record of the Security Council. What does the representative of India promise to do in return ? Would he categorically undertake to fulfil India's part of the obligations under the international agreement, withdraw India's forces, and hold a free and impartial plebiscite under the auspices of the United Nations, as laid down in the Commission's resolutions ? No. All that he says he will do is :

> "Under conditions of a fair disposition of this matter, we would go out of our way to establish friendly relations with Pakistan and to seek to settle all outsandidg problems in the same spirit" [796th meeting, para. 130].

There is no guarantee here that India's obligations under the Commission's resolutions will be carried out.

My delegation has been amused to hear of the great benefits which the Govrnment of India claims to be conferring on the subjugated people of occupied Kashmir. I do not think, however, that the Security Council is necessarily interested in these claims. The Security Council has heard such arguments often enough. If India has conferred these great benefits on the people of Kashmir, then they should vote for India in a plebiscite. Why not put this issue to the test ?

But all this is neither here nor there. The Security Council must, in its wisdom, take effective steps towards the implementation of the Commission's resolutions to which both India and Pakistan are parties and to which both proclaim their full adherence. The plain issue is the carrying out of international obligations by which India and Pakistan are engaged. I cannot imagine how the Defence Minister of India reconciles his version of the present position of his Government with his Government's acceptance of the two resolutions and the constant assurances of willingness on its part to seek a peaceful settlement of the dispute given recently to Mr. Jarring.

It is for the Security Council to consider what measures it can appropriately take to secure the implementation of international commitments.

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177. *Text of the speech made by Mr. Noon (Pakistan) in the Security Council meeting No. 804 held on 20 November 1957.*

Before I proceed, I should like to say a word about the slanderous attacks made on me personally by the representative of India in his various interventions, and particularly during his speech at the 803rd meeting of the Security Council. I take strong objection to his observations. I can pay him back in his own coin, but I do not wish to convert the Security Council into an arena for personal abuse and recrimination. I shall certainly answer him fully elsewhere. Here all I wish to do is to express the hope that debates in the Security Council will be kept within the bounds of decency, sobriety and good sense.

My delegation has carefully studied the draft resolution before the Council [S/3911] and has listened with great attention made by its sponsors. I am constrained to express the profound regret of my delegation that a reference should have been made in the draft resolution to part I of the Commission's resolution of 13 August 1948.

As I have already explained in my previous statements, part I has been fully and faithfully implemented. This fact has been certified by the United Nations representative for India and Pakistan, not only in paragraph 29 of his third report [S/2611 and Corr. 1] but also in paragraph 44 of his fifth report [S/2967]. As I said before, Mr. Jarring, in paragraph 16 of his report [S/3821], does not assert that part I has not been implemented. The finding given by the United Nations Commission for India and Pakistan, in our considered view, is not open to further discussion, and there was, therefore, no reason to reopen any issue that was already closed.

I have repeatedly submitted earlier that there has been no augmentation whatsoever, so far as Pakistan is concerned, of

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the military potential in the State of Jammu and Kashmir. On the contrary, the evidence adduced by me in my previous statements shows that there has been a reduction, and indeed the facts given by the Indian representative himself confirm this conclusion. The fact that a substantial reduction has been made in the armed forces on the Pakistan side of the cease-fire line has also been certified by the United Nations representative.

Regarding part I, paragraph E of the resolution of 13 August 1948, I have already stated that repeated appeals have been made by my Government to promote an atmosphere which would permit the peaceful holding of a plebiscite in the State of Jammu and Kashmir. I reaffirm that my Government has made every effort to maintain, and has succeeded in maintaining, a peaceful atmosphere throughout "Azad" Kashmir as well as in Pakistan. I need hardly assure the members of the Security Council of our sincere and earnest efforts in this direction. Despite provocative propaganda emanating from the other side, we have done, and shall continue to do, our best to maintain a peaceful atmosphere favourable to the promotion of further negotiations.

In view of what I have stated, I cannot but regard it as a matter of profound disappointment that a reference to part I of the 1948 resolution should have been included in the draft resolution. As I have said before, less than justice has been done to Pakistan by some members of the Security Council in their assessment of where the blame lies for the non-fulfilment of accepted obligations.

In the draft resolution, the importance of demilitarization in the State of Jammu and Kashmir as a necessary prerequisite to the holding of a free and impartial plebiscite has been recegnized, even though the procedure suggested for the achievement of demilitarization is tardy. It is the considered view of my delegation that it is only through speedy demilitarization that progress can be made towards full implementation of the two resolutions by which both the Goverments of India and Pakistan are bound. As stated by the representative of Iraq,

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my Government still considers that the most practical solution of the problem of demilitarization is to send a United Nations force to Kashmir to hold the cease-fire line and to call upon the parties to withdraw their armed forces.

We note that Mr. Frank P. Graham is being asked to enter into negotiations with the two Governments, in order to implement part II of the 1948 resolution and, in particular, to reach an agreement on the reduction of forces on each side of the cease-fire line. Mr. Graham is held in great respect as a highly principled negotiator of great integrity, wisdom and sincerity of mind ; and we welcome his selection to discharge this important assignment. We note that the Security Council has called upon the Governments of India and Pakistan to co-operate with Mr. Graham in order to formulate an early agreement on demilitarization procedures. We, on our part, will not fail to give our fullest co-operation to him in the discharge of his responsibilities, and we very much hope that Mr. Graham will be successful in this mission.

I would add that we earnestly hope that the expression "as soon as possible" in operative paragraph 5 of the draft resolution will be interpreted in its literal sense, and that the United Nations representative will be able to report back to the Security Council within a reasonably short period. We trust that no impediments will be placed in the way of the United Nations representative, nor co-operation withheld from him. We shall certainly do whatever we can to enable him to report to the Security Council at the earliest opportunity on the completion of his task.

The Kashmir dispute has now been before the Security Council for ten long years. It is in the interests of India and Pakistan, as well as in the interests of international harmony generally, that the dispute be settled amicably on agreed principles and without further delay. I seek the assistance of the Security Council in this happy result ; and in particular I request the repesentative of the Soviet Union to let the pro-

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cesses of United Nations conciliation take effect as speedily as possible.

In conclusion, I submit that my Government, in accord with its constant desire to assist the Security Council in a peaceful settlement of the Kashmir dispute, will, in spite of its serious objection to some aspects of the draft resolution, receive the United Nations representative, Dr. Graham, and accord him all courtesies and co-operation in carrying out the mission assigned to him.

178. *Text of the speech made by Mr. Krishna Menon (India) in the Security Council meeting No. 805 held on 21 November 1957.*

At the 802nd meeting of the Security Council, the representative of Pakistan made a great many observations which purported to be in reply to what had been said on behalf of the Government of India. These deliberations have dragged on so long that it is not my intention to go into this seriatim. There have been contradictions time after time; they are in the records. And, obviously, contradictions are of no value. Therefore, I propose to deal with these matters in very brief form.

The first point that was made by the Foreign Minister of Pakistan was that there had been no augmentation. We have dealt with this not only in the present series of meetings of the Council, but also at previous sessions; however, in case members of the Council are interested in the facts, we refer them to paragraphs 201 and 225 of the third interim report of the United Nations Commission for India and Pakistan.

In this connexion, may I say that the representative of the United Kingdom has been good enough to say that each representative quotes part of the report and not the other. I

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have never heard the representative of the United Kingdom quote the whole of a report. It is not possible. We have not quoted anything out of context. If we have quoted anything out of context or anything that would distort the meaning of the Commission's report we are prepared to make the necessary corrections ; and we deeply regret that a statement of this kind should have been made, not with malice aforethought or afterthought, but just casually.

A reference to paragraphs 204 and 225 of the Commission's third interim report will show that there had been augmentation—not augmentation by one per cent or two per cent, but, in fact, it said that the whole of the resolution of 13 August 1948 [S/1100, para. 75] had been vitiated by the fact that material changes had taken place. Further, there is a minority report of the Commission which refers to the violation of part I, paragraph B, which also has been referred to, I do not propose to go into any great detail because I think it is only right that I should not tax the patience of the Council any further, and so I shall make this as brief as possible and come to the draft resolution.

This is what the Commission said :

"At the time that the Commission adopted the resolution of 13 August 1948 it had reason to believe that the "Azad" forces did not constitute a properly organized and equipped military force...."

"There is, indeed, no doubt that the 'Azad' forces now have a strength which changes the military situation.... It is reasonable to suppose that if the Commission had been able to foresee [this is the important part] that the cease-fire period would be prolonged throughout the greater part of 1949 and that Pakistan would use that period to consolidate its position in the 'Azad' territory, the Commission would have dealt with this question in part II of the resolution of 13 August."

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I do not wish to weary the Council with more details of this. We have not, in previous submissions before the Security Council, given the details with regard to what are called "the northern areas'. These areas are not a separate state ; these are part of the State of Jammu and Kashmir, and, what is more, the Commission expressly said so and stated that the security of the whole of the territory was the responsibility of India.

We have dealt with this in detail, and since it is now admitted that the forces in the northern areas have been considerably increased - I am not going into the history of who handed over the northern areas—even during recent years, I do not propose to deal with them. The northern areas are an integral part of the State of Jammu and Kashmir and at the time of the adoption of the resolution there was no question of the "Azad" forces there.

There are many references in the Commission's report which definitely state—and I am sure the representative of the United Kingdom will be able to find this out for himself - that the Commission did not think at that time that there were any Pakistani force there.

The Foreign Minister of Pakistan has charged me with inaccuracy and contradiction in regard to the "Azad" forces. It is quite true that some time during last year I did refer to forty-two battalions instead of thirty-five battalions. That was our information at that time, which was immediately corrected, and we have always said that it was thirty-five battalions.

Now if the battalions are smaller in number, it is because there has been a reorganization of these forces and not because their fighting strength or their personnel has decreased. It is possible to have battalions of 800 or 500 or 1,000, and today if the battalions are fewer, it does not mean that there has been any de-augmentation or any withdrawal, or anything of that kind. I would like the Council to refer to my statement on 9 October [795th meeting, para. 91], where I said that it is only a

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matter of the number of divisions, and not a contraction of the aggregate of forces. This is the kind of Hansarding which does not go to the substance of anything.

Now we come to a very important part which concerns Mr. Frank P. Graham. Mr. Graham is not a member of the Council and we have no responsibility for criticizing him or defending him. But the Foreign Minister of Pakistan tells the Council [804th meeting, para. 33] that the implementation of part of the resolution of 13 August 1948 has been certified by Mr. Graham in paragraph 29 of his third report and in paragraph 44 the fifth report. I have been at great pains to find out where it is.

First of all, if may say so, Mr. Graham has not been authorized by the Council to certify anything. The authority of the United Nations Commission for India and Pakistan is to report to the respective Governments, mainly to the Government of India. But anyway, we will leave that alone. There has been no certification of any kind. In the third report, the discussions with Mr. Graham proceeded as I told the Council beforehand. All these discussions were of an exploratory character, and when they are of an exploratory character you take certain things as assumptions, taking for argument this, that and the other. That is all. Th e question of the augmentation had not arisen. As regards any idea that Mr. Graham had certified the implementation of part I, first of all, Mr. Graham does not have the authority to certify, and secondly, he has not certified, and thirdly, they are contrary to the facts which are established in the Commission's report itself. What he said was : Assuming that part I had been implemented, then we may do this, that or the other. That was what was said. There was no question of certification at any time, and the Council was misled if it took into account the statement made by the Foreign Minister of Pakistan that there was any certification in this way.

The Foregign Minster of Pakistan again goes on to say, to quote from Mr. Jarring, probaly not in literal terms, that

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India had caused a deadlock. So far as I remember, what Mr. Jarring said was: "I established that a deadlock...on part I..." [798th meeting, para. 40.] But the Foreign Minister of Pakistan says that India has created the deadlock. As far as we know from the report here, unless there is a change of mind, there is nothing in the report to warrant this statement. The Foreign Minister of Pakistan said: "An artifical deadlock has arisen because it suits the Government of India to create it—and for no other reason." [802nd meeting, para. 9.] This is what Mr. Firoz Khan Noon attributes to Mr. Jarring, and we deny that. What Mr. Jarring said in the Council was:

> "In my report, I established that a deadlock had been reached between India and Pakistan on part I of the resolution of 13 August 1948, and in particular on paragraph B and E of that part." [798th meeting para. 40].

Then the Foreign Minister goes on to contradict himself. He says that some members of the Security Council have expressed doubts about the implementation of part of the resolution. If some members have expressed doubts, surely India alone is not in doubt. We have produced before this Council—which I do not propose to go into now; it will take time—extensive evidence, which has not been contradicted, in regard to the maintenance of a peaceful atmosphere; that is, part I, paragraph E. We have produced extensive evidence not only today but over the ten years, and what is more, it is a matter of deep regret to my Government that the attempts at subversion, at sabotage, at blowing up bridges, mosques and temples inside Kashmir have attracted so little attention on the part of certain members of the Council.

I propose to skip over a large number of these criticism because there is a limit to which one can answer repetitive and irrelevant statements.

My good friend, General Romulo, the Philippine representative, with great zeal apparently has referred to his obligations

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in regard to my country. At the time when the instruments establishing the South-East Asia Treaty Organization (SEATO) were signed, protests were made to all the countries concerned, particularly to the United State and the United Kingdom, that they had no business to take under protection certain territories under Certain Powers. The day of protectorates over. If the Philippines wants to protect India—well, it may have a very good motive. What we are told, unless I am mistaken —and I cannot make a mistake because I have the text—is that they wish "to uphold the principle of equal rights and self-determination of peoples." [804th meeting, para. 16.] How they uphold this, I do not know. Our people are free, as free as any people in the world.

In this discussion, we have made no criticism of countries joining defensive pacts. What we have said is this : When those defensive pacts are used by the party in question against us, then we have a right to point that out. That is a very different question. That is a very different issue. What use one of the parties makes of a compact is different from criticizing the compact itself. We do not propose to address any questions either to the United Kingdom or to the United States as to whether they subscribe to this statement. It is a fantastic statement, it is a surprising statement made by one of the members of the SEATO Pact in regard to its object, namely, to establish self-determination in our country. We do not enter into it because the question is too absurd. We would not ask the United Kingdom a question of that kind. They happen to be good friends of ours. We would not ask the United States a question of that kind. We have no right to question the actions of sovereign Governments, right or wrong. If they are wrong actions, either they take the consequences of these actions, if the other Government is powerful enough in the modern circumstances of the world, or they get away with it. But we can express our opinions. We regret that all this war apparatus is now part of the area.

That is another question altogether. As far as the issue before us is concerned, I did not read from the newspapers, I read from statements of Prime Ministers, Foreign Ministers,

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responsible Ministers of Pakistan as to the purposes for which they entered the Pact.

Is there any evidence whatsover that we any time violated the territory of Pakistan ? We have refrained from placing before the Council the number of instances where Pakistan has tried to probe our frontiers. We have no intention of publishing the information, because it will only create irritation. In spite of the serious nature of these actions, we still maintain only an armed police on the international frontier.

The time will come when the great countries which are permanent members of this Council and have a very great responsibility will regret encouraging banditry of this kind. I mean political banditry; I do not mean anything else—that is to say, the disregard of ordinary canons of justice, as happened a year or two ago. If it becomes very serious or if it is necessary to convince those who are the aggressors that we are capable of turning back aggression, then we may do something. But we do not go about inflicting casualties, and that is that.

This reference by General Romulo has hurt us very much. While we differ totally from the politics and the approach that the Philippine Government follows, we always regarded it as an extremely friendly country. For the Philippines to tell us that it is going to interfere in our internal affairs—that is a bit thick.

The representative of the United Kingdom, in the usual English way, has uttered his warning with regard to bomb explosions—that he does not approve of them, that terrorism does not take anybody anywhere and so on. We are grateful for that and we hope that in view of the considerable influence that the United Kingdom has over Pakistan that will have some effect. But we have to take care of our own safety.

In this Council, the Foreign Minister of Pakistan has denied the categorical statements I made before it, not out of nowhere but supported by documentary evidence; our trials, he

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said, are stage managed, I do not think that any of the members of this Council believe that in India law is stage-managed for political purposes. If anything, since the transfer of power to Indian hands, we have removed, as I said to you, the judiciary from executive. There is no stage-managing of any kind of any trials. The trials are public. The Pakistan paper stated that they were held secretly. That is not true. Therefore, I would request the Security Council not to accept this statement. It is like all other denials. You do not have to go very far. Did not Pakistan come here and deny that it had invaded us ? And did not the Foreign Minister come a few months afterwards and say, "We did invade them" ? Therefore, if they can make a serious denial once and afterwards go back on it, then where do we stand ?

We were told that the elections in Kashmir are rigged. We owe no responsibility to the outside world as to how we conduct our elections. But we are anxious that the truth be know that we are genuinely interested in decent elections. *The New York Times* has been quoted. I have no desire to the character of any paper, local or otherwise. In the 795th meeting of the Security Council, I gave you the details of the election figures [*795th meeting, paras. 77 and 78*]. We cannot put up puppet oppositions. That is worse than not having an opposition. Are we to organize an opposition ? There were large numbers of seats that were contested. There were election petitions being circulated. There were by-elections being contested. Many seats were won by very narrow margins. There was more than one party fighting in these elections.

Since newspapers have been read, you will permit me to read a very short extract from a paper which is not always friendly to India on the Kashmir question or on the question of the cotton trade or anything of that kind, namely, the *Manchester Guardian*. On 20 April 1957, this newspaper expressed the view that :

> "The Jammu elections are a great and quite a genuine victory for the National Conference. Elections in Kashmir are over. In Jammu, the National Confcrence was given

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a tough figh...and all but five of the seats were contested. After strenuous canvassing and an election fever equalled only on India, most advanced parts, the National Conference won two-thirds of the seats."

We know how we had to work to win these elections.

The paper continues :

"Over 70 paper cent of the electroate turned out, women, men and elders, in spite of battering rains."

That was in Jammu. It may be argued that the Jammu majority is Hindu, but it goes on :

"In the Kashmir Valley elections are over too except for two seats. [This was on 20 April.] Of the eight seats that were contested the National Conference won seven and the tnrn-out was as high as 50 per cent in spite of the icy rains and slushy mud The National Conference would have probably won most of the seats in the Valley had there been a contest....

"What has surprised everyone in India is the large number of people who have taken part in the elections both in Jammu and in Kashmir."

It is possible for me to quote Swedish newspapers, German newspapers and United States newspapers—not *The New York Times*. Their correspondents were there, because there was no restriction on any newspaper correspodent going into Kashmir. They had to get a permit from the Defence Ministry, which is very largely a formality, and they were there. The elections were open. Elections are conducted, under the law of India, under an election commissioner who, as the representative of the United Kingdom will easily understand, is above the executive. The executive cannot give any orders—and this does not happen in Britain—to our election commissioner. Election petitions are contested. The Prime Minister has ben elected to Parliament, but his seat is being contested

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in a court today. In the same way, those elections were contested. So that is that.

There is one matter which concerns the United Kingdom as much as it concerns us. It might cost them a little money if they took the other standpoint. India is a successor State to Britain, and this has been internationally recognized and, what is more, recognized by the United Nations.

Here is the memorandum of the United Nations Secretariat on the membership status of India and Pakistan [Press release No. PM/473], dated 12 August 1947. I should like to read this into the record, because I should not expect Pakistan to contest this—not that it matters. It does not matter at all whether they have understood it or not. The memorandum says :

> "The Indian Independence Act provides that on the fifteenth day of August, 1947, two independent Dominions shall be set up in India to be known respectively as India and Pakistan. Under this Act, the new Dominion of India will consist of all the territories of British India except certain designated territories which will constitute Pakistan.
>
> "What is the effect of this development on membership and representation of India in the United Nation ?
>
> "From the legal standpoint, the Indian Independent Act may be analysed as effecting two separate and distinct changes :
>
> "From the view point of international law, the situation is one in which a part of an existing State"—that is, the whole of the Indian empire—"breaks off and becomes a new State." (I would request Sir Pierson Dixon to read the debates of the time and the archives of the time and to read all the conversations that went on between 21 May and 1 June 1947 in London.) "On this analysis, there is no change in the international status of India."—

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this is from the United Nations—"it continues as a State with all treaty rights and obligations, and consequently with all the rights and obligations of membership in the United Nations. The territory which breaks off, Pakistan, will be a new State;—we were one of those who wanted them as a new State here—"it will not have the treaty rights and obligations of the old State, and it will not, of course, have membership in the United Nations.

"In international law, the situation is analogous to the separation of the Irish Free State from Great Britain, and of Belgium from Netherlands. In these cases, the portion which separated was considered a new State; the remaining portion continued as an existing State with all of the rights and duties which it had before."

I shall not read the remainder, except the last part ; and may I say, in view of what has been said, that I am not reading selectively—the papers are available to everybody :

"In conclusion, the effect of the Independence Act may be summarized as follows : 1. The new Dominion of India continues as an original Member State of the United Nations with all rights and obligations of membership. 2. Pakistan will be a new non-member State. In order for it to become a Member of the United Nations, it would have to apply for admission pursuant to Article 4 of the Charter, and its application would be handled under the pertinent rules of procedure of the General Assembly and the Security Council."

I think that clears up that matter. It really has not much relevance to this. I have decided that there is not much point in placing a great many facts before you at this stage, while we have the draft resolution and we know how it will be voted upon, I shall not go into the much disputed question of paramountcy. Whatever rights there are, they remain in effect.

Then we are told that because we made a complaint that

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does not give us any precedence. That would be true if that complaint was not *bona fide*; but when that complaint was made it was a complaint of agression, and that aggression was denied. We do not argue that just because somebody comes here with a complaint he is therefore the innocent party and the other is the guilty party. It depends on the merits of the case. I invite the Security Council to look at the complaint by India and look at the answer by Pakistan. May I remind you that there is only one paragraph in the answer by Pakistan that deals with Kashmir, and that paragraph is a total denial of agression, but agression was afterwards proved.

It is not necessary to go into all the questions of double standards and say that it is far better to have a double standard than no standard at all. Still we are quite content for the world to form its own opinions. We do not claim any high moral standards for ourselves. We do the best we can to govern our lives according to the United Nations Charter and according to the rules of the game. In spite of what is done to us, we keep our friendship with the countries that are military allies of the other side. Sir Pierson Dixon, quite rightly, feels hurt when I refer to partisan attitudes. There is nothing personal about this. Obviously, from our point of view, it is a partisan attitude, because the facts to which we refer are in the book. We are not introducing anything new. I shall come to that in a minute.

Some play was made of the use of the words "a mere scroll", and reference was made to something being a mere scrap of paper. The law books state that a deed may be delivered as a scroll, that is as a simple writing, not to become a deed of the party expressed to be bound thereby until some conditions shall have been performed. That is the position of the resolution adopted by the Commission for India and Pakistan on 13 August 1948.

Now with regard to the northern areas, we have placed before the Council the facts of the case. If the resolution of 13 August 1948 is to observed, then it is necessary to withdraw all

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Pakistan forces from this area. At one time we had asked for fifteen points to be garrisoned in order to protect trade routes. It would be necessary to negotiate with representatives of the Commission as to how many points we should want now. Therefore, this involves a very grave violation of part I, paragraph B of the resolution, because the Security Council was never informed of this question. I am not introducing a new matter because we do not want to prolong the discussion. Pakistan informed the Commission that it had no troops in the northern areas between May and December 1948. I read out all of this before.

There are various allegations of genocide, and so on, which are too frivolous to be dealt with, and we have no desire to deal with this matter at all. If there are any points of the Pakistan statement which have not been read into the record on this particular occasion, it is because I do not want to take the time of the Council and also because, to the best of my belief, they will be found either in the reports of the Commission or in the statements which I have previously made.

With the President's permission, I shall proceed to deal with the draft resolution before the Council [S/3911]. The representative of Colombia appeared to feel aggrieved [803rd meeting, para. 36] that we had not mentioned that the draft resolution was sponsored by them. All we said was that the main architect of the draft resolution on Kashmir had always been the United Kingdom [*ibid.*, para. 1]. There has never been any secret about it. They know more about it. Then more recently it has been the United States and the United Kingdom together. That does not mean that other countries just put down their names. I did not state anything of the kind. What is more, I did not want further to create what I would regard as a situation of embarrassment in view of the fact that it was the Colombian representative, Mr. Lozano, who was largely reponsible for our agreeing to the resolution of 13 August 1948 on the assurances which were given. The end of history has not come, and I feel that the time will come when a more objective view will be taken of this matter, when

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the question of the security of the country will be taken into account. Therefore, I apologize to the representative of Colombia. If he feels hurt in any way, it was not meant in that way at all.

As regards the draft resolution before the Council, first of all we have a certain objection to being pushed or moved from one position to another. There is no resolution which has been accepted which refers to disputes or commitments. What I said was that we are engaged by these resolutions, meaning thereby that once one commitment is performed another commitment arises. I do not know how you translate that into French or Spanish or whether there is some difference in this matter. However, just to slip it in this way, not with any bad motive, is against us.

Then we come to the question of the dispute. There has been on this occasion, particularly from some of the delegations, a great deal of argument about territorial disputes. You will notice that neither in the Security Council resolution of 17 January 1948 nor in the Commission's resolutions of 13 August 1948 [S/1100, para. 75] and of 5 January 1949 [S/1196, para. 15] is there any reference to a dispute. It is a situation which was created. If this means the same thing, we have no objection, but if the idea is a territorial dispute, then we must join issue.

We would like to point out, not because the draft resolution is not ours nor Pakistan's—under the rules of the Security Council only its members can submit resolutions—that while there is a reference to the resolution of 13 August 1948 and 5 January 1949, there is a significant omission, namely, that of the Security Council resolution of 17 January 1948, which is a most important document. That is what we are here about. If the resolution of 17 January 1948 had been observed, then there would be no augmentation, there would not have been the complaint by the Commission that Pakistan had used that period for building up its forces. I did not say this ; this is in Commission's report.

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Therefore, if there is no reference to the resolution of 17 January 1948, which is a most important resolution, then the other resolutions have no effect. If the 17 January resolution were observed, then it would be easier to proceed. This resolution was accepted by both parties. I would like to say that although both Ambassador Wadsworth and Sir Pierson Dixon specially mentioned this is their statements, I do not find any mention of it in the draft resolution. Therefore, it could not be that there was an omission. I do not know how it is in other parts of the world, but the representative of the United Kingdom will agree that the speeches on a resolution, bill or statute have little meaning ; they are inoperative. It is what is in the text that is important. Could this omission have been made because of special reasons ?

I have already referred to two changes. One is the changing of engagements to commitments ; the second is the omission of the 17 January resolution. We come now to the third. The sponsors again, as I have said before, have tried to introduce the working appropriate to a territorial dispute. A territorial dispute does not come under Chapter VI of the Charter.

Then we come to the sixth preambular paragraph. There is no reference here to the annexation of part of the territory. The Government of India has laid a great deal of stress on the fact that there must be de-annexation. Unless there is de-annexation there is no fulfilment of part I, paragraph B of the resolution of 13 August 1948. There is no adequate reference to paragraph E except as a general appeal to bothsides which really kills the thing because one side makes the difficulties. They are not considered important enough for inclusion. The whole of the draft resolution is centred on what the sponsors have chosen to call demilitarization. I will come to that in a minute.

Operative paragraph 1 reads :

"*Requests* the Government of India and the Government of Pakistan to refrain from making any statements and

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from doing or causing to be done or permitting any acts which might aggravate the situation and to appeal to their respective peoples to assist in creating and maintaining an atmosphere favourable to the promotion of further negotiations."

We have already had the statement of Pakistan that they have made an appeal. Is that sufficient ? Does that answer the campaign of hatred, does that answer the appeal to *jehad*, does that answer the statement of Mr. Daultana the other day, does it answes the statements of previous Prime Ministers, does that answer the whole compaign that goes on in Pakistan for the invasion and the destruction of India ?

Then we come to operative paragraph 2. Here again, I should like to draw the attention of the Council, and particularly of the representative of the United Kingdom, to the word used in this paragraph, the word "desirable". Does he think it is desirable or essential ? The paragraph reads :

> "*Requests* the United Nations Representative for India and Pakistan to make any recommendations to the parties for further action which he considers desirable in connexion with part I of the resolution of the United Nations Commission for India and Pakistan of 13 August 1948 .."

Sir Pierson Dixon has been good enough to say in various other places, and I do not propose to quote his words, that one part is to succeed the others. There is a difference in sequence between succession and taking place at the same time. But here it merely says that it is "desirable", that is to say, we can talk about part I if you want to, but what is important is part II. It is not part II that they are talking about, it is the later part of part II, that is to say, to lay the frontiers of India open to invasion from the other side. That is a position which no sovereign State can be asked to accept.

I have already referred to Mr. Jarring's report where he

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says that the deadlock is in part I, in which case it should not be "desirable" but something else. This is what Sir Person Dixon said : "It was originally contemplated that the three parts of the resolution of 13 August 1948 should be implemented in quick succession." [797th meeting, para. 13.] "Succession". He did not say the last part first and the second part afterwards. He said "in quick succession", and we are grateful to Sir Pierson Dixon for saying so. There is interdependence between the parts. We do not deny that, but interdependence will only arise when the parts are performed as they are laid down in the resolution.

The representative of the United States stated : "Over the past years there have been extensive efforts to implement part II." [803rd meeting, para. 32.]. I think I have answered that. If exploration is to be penalized, then there can be no talks at all. The fact that we talked to Mr. Graham and his successors and his predecessors about various matters does not mean that we have committed ourselves to do anything. I am not aware that "over the past years there have been extensive efforts to implement part II". Both India and Pakistan have previously consulted the United Nations Representative to bring this about. We have talked as part of the technique we employ ; that is to say, we were always willing to listen to counsels of conciliation ; that is why I came here.

There is little purpose in going into the details of the conversations that took place for several years here on in Geneva or in Paris or elsewhere with regard to part II of the resolution of 13 August 1948. Our position in this matter is that at present we are engaged by the resolutions. I submit that willy-nilly the attempt is to alter these resolutions. We are not willing for those resolutions to be altered because if any of these things are done or any of the other things that are said in the speeches or what Pakistan demands, then you will have changed the resolutions.

Mr. Jarring told us that he is proceeding on the basis of the resolutions. If those resolutions are there, than they have

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to be carried out in that way. What really happens is the alteration of these resolutions by first of all calling upon India to withdraw its troops from its own sovereign territory in the present conditions, which I have no desire to detail, but which I have set out in some detail beforehand, and to refer to the duty of a territory to defend its own integrity ; we cannot do that especially in conditions of subversion and especially in the condition where another country is poised for hostility against us. We are prepared. We do not go away from the engagements of these resolutions, but first the resolution of 17 January 1948 and then the resolution of 13 August 1948, without any alterations and with the assurances that go with them. Sir Pierson Dixon had been good enough to say that there have been assurances given to the two sides. There are no contradictory assurances, because the Commission, in the course of negotiations to get a settlement, probably told one side and the other side one thing and to come back. You have to look at the last date. It is the last date of those assurances that counts.

The whole of the draft resolution deals with part II of the resolution of 13 August 1948. It says :

> "Calls upon the Governments of India and Pakistan to co-operate with the United Nations Representative in order to formulate an early agreement on demilitarization procedures .."

Thus, presumably, is a reference to part II. Part I is completely forgotten.

This draft resolution is a repudiation of the Jarring report. It does not say so in terms ; it gets out of it by paying Mr. Jarring a lot of compliments, and in various other ways. But when it says "to formulate an early agreement on demilitarization procedures, which should be implemented within three months of such an agreement being reached" this is simply a reference to part II of the resolution of 13 August 1948 and, to judge from the speeches, to the later part of part II.

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There is only one final observation I desire to make at present. The Government of India authorizes me to say that we are totally opposed to this draft resolution – although not, of course, to the part that pays tribute to Mr. Jarring. We came here under Chapter VI of the United Nations Charter. We will remain here under Chapter VI. Under Chapter VI no resolutions have any value that do not contain the element of conciliation. There must be either agreement between the parties or hope of agreement between the parties. We must, with great respect, seriously draw the Council's attention to the fact that, willy-nilly, it is sought to change the resolution further. We are net willing to accept this change.

We are prepared to honour our commitments. When Pakistan fulfils the first part – namely, when Pakistan takes away the troops and equipment brought in after the acceptance of the resolution and de-annexes the place—when we enter into the security of our territory, and when various other things to which I referred the other day take place and we are assured that this is not just a twenty-four hour affair but one that will continue, the next step will be for Pakistan to withdraw its remaining troops under part II. Then comes our obligation. It is a purely voluntary obligation which we assumed, but we are prepared to carry it out, although only on those conditions.

This draft resolution, we are sorry to say, is cast in a mould which is regressive. It goes farther back than the previous Security Council meetings ; it goes farther back than Mr. Jarring. It does not take into account the appeal we made to the Security Council. Any country has the right to come here and inform the Council – inform, not complain – that there is an attempt to subvert, to destroy. And it is not at that time that any moral support should be given to the aggressor. We submit, with great respect, that the draft resolution gives moral support to the aggressor. If military alliances, if the conditions in the world, if various other factors or such positions as we have in the world are inimical to the position of other countries, well, there are other steps to be taken ; but here we have to go

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by the resolutions. And I submit that any moral support that is given to the aggressor in this business will result in greater trouble in Kashmir.

We are not committing aggression against anybody. Even when our frontiers are penetrated, we are not taking the logical action. We shall continue to behave in this way. If sometimes, in the heat of debate, we have said anything to hurt anybody's feelings, we are sorry. But so far as we are concerned, I tell the Council categorically that the Government of India has instructed me to say that we are totally against this draft resolution. This draft resolution is an incitement—not in terms and not in intention, but its effect is an incitement to subversion. When the intelligence people in Pakistan, when Pakistan money and when Pakistan ammunition are being used to blow up our territory, how can you gentlemen subscribe to a draft resolution of this kind? Surely, this has gone on for years. It is time now to give some attention to a country that has been invaded but which for nine years has possessed its soul in patience and will continue to do so. I am not guaranteeing that it will do so forever, but so long as the present Government and the present state of the country lasts, it will refrain from the use of force even in asserting its legal and moral rights. We will carry out the dictates of the United Nations Charter in every way, but we cannot accept resolutions of this kind. How many resolutions have been passed? Have they had any effect? No.

The only resolutions which took us a little further were the resolutions that we agreed to. But once they have been agreed to, we cannot separate them from the assurances or from the meaning, or try to alter them. The Commission's resolution of 13 August 1948 follows that adopted by the Security Council on 17 January 1948, and the Government of India, irrespective of whatever accusations may have been made, and irrespective of anything other people may expect or otherwise, will carry out its international obligations. But international obligations cannot supersede the text of those

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obligations or their spirit. Moreover, this cannot be used as it has been used in the past. It is all in the records of the Commission for India and Pakistan. It cannot be used as part of the invasion of our country.

Are we to turn to the members of the Security Council when our country is invaded? We have to establish, first of all, that we were invaded, because here is the distinguished Foreign Minister of Pakistan making the fantastic suggestion that we are aggressors. How can we be aggressors if we are the successor State – when the territory has acceded to us? We are precluded from producing documents in this connexion, and before I close I should like to say that we have not turned down or said a negative to the suggestion thrown out by the representative of Sweden because we respect the law. We like to see it in proper shape, and we like, as he has said, to see it put forward at the proper time.

Therefore, we regret the general line-up, the general majority of members of the Security Council. Just because a majority takes a view, it is not necessarily right. We do not ask for any consideration outside the law. We do not ask for any special treatment. We came here with faith in the Charter, without taking sides in the cold war and with the faith that aggression would not be tolerated. And even assuming—and I trust that those who are taking my speech down will be careful to include this word "assuming" for the sake of argument that there are mistakes on our side, no mistake is greater than the crime of aggression, and the Security Council cannot ask a country to compound aggression.

Therefore, our request is that this draft resolution should not be passed. If it is passed, it is supporting aggression. That may be regarded by some people as theoretical. But it will create trouble over in India, over in Kashmir. It will encourage those forces which, during the last few months, have been fomenting trouble—and I have myself seen some of the results. This is not a war by Pakistan on one front. The Security Council is only a part of it. This goes on here as the

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propaganda platform. And, on the other side, trouble is created, as I told you, largely relying upon the fact that we go easy on these things.

I have nothing more to say at the present moment, except that I hope that this resolution, well meant perhaps, with the names of the sponsors who, though they are not military allies of ours, are old friends and are all committed to the United Nations Charter. It must be assumed that their position is one which tries to carry out the Charter.

I want to repeat once again that we are not going back on any engagements of ours. But we are not prepared to go into any position where aggression has to be recognized. Who in the world can say, when a country has been annexed, when half of the country has been occupied, that there has been no annexation ? This is the first time that we have heard about Pakistan's right to be there, because, in the older records, they refused to recognize and Government over there.

This is all I have to say. We cannot oppose the resolution, we cannot support the resolution, because we are not members of the Security Council. It is your wisdom – and the world will regard it as wisdom because you are the Security Council. But it is our country, and, strange as it may seem, we have considerations for its security. And this talk about the solution of a problem - it is not a problem when a country is invaded. Why has nobody told Pakistan : "By what right do you annex this territory ?"

I am not going into the Pakistan Constitution, which has been misquoted and misrepresented in this place. I invite the representative of the United Kingdom to read it for himself. How dare a country annex another territory over which it has no severeignty and come here and then make these arguments ?

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179. *Text of the speech made by Mr. Noon (Pakistan) in the Security Council meeting No. 808 held on 2 December, 1957.*

My delegation has listened with great attention to the statements of the sponsors of the resolution and of the amendments, as well as to the statements of the other members of the Council. On our parts, we regret that the specific objects that were mentioned in the resolution, particularly in regard to demilitarization, are not emphasized in the amendments, which, we apprehend, may permit the reopening of many subsidiary issues that have already been discussed in great detail and settled by the United Nations Commission for India and Pakistan and the various United Nations representatives.

We note that the terms of reference of the United Nations representative will cover the implementation of the resolutions adopted by the Commission for India and Pakistan on 13 August 1948 [S/1100, para. 75] and 5 January 1949 [S/1196, para. 15], which constitute an international agreement by which both the Governments of India and of Pakistan are bound. For this reason, we shall not be opposed to the amended resolution, which is designed to further the full implementation of the two resolutions of the Commission.

I must reiterate that it is our firm conviction that part I of the resolution adopted by the Commission for India and Pakistan on 13 August 1948 has already been fully and faithfully implemented. My Government is confident that Mr. Frank P. Graham, who has already certified this fact, will proceed as expeditiously as possible to deal with part II. I have already stated before the Security Council that my Government will offer full co-operation to Mr. Graham, whom we hold in high esteem.

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179A. *Text of the speech made by Mr. Krishna Menon (India) in the Security Council meeting No. 808 held on 2 December, 1957.*

I presume that this will be the last of the present series of meetings on this subject. Therefore, I consider it my duty and my privilege to express our thanks to the previous President of the Council, under whose presidency the bulk of this subject was discussed, and also to convey to you, Mr. President, our good wishes, even though India is not a member of Council.

So far as the resolution is concerned, resolutions are drafted, submitted, amended and passed by members of the Council ; we are the recipients of them, and our Governments will have to deal with them as they are communicated to us. In the earlier meetings of the present series, when there were reasons to think that the resolution might conform more closely to the purposes of the United Nations Charter, or might be much the other way, we have stated at all times that, so far as the Government of India is concerned, the hospitality of our country is always open. If your predecessor in office, Mr. President, had been placed in a position similar to that in which Mr. Jarring was placed, and had come to India, he would have been welcomed in our land, in spite of the fact that his country is a military ally of one of the parties, and as an Asian he would have been doubly welcomed. Therefore, so far as welcoming anyone is concerned, Mr. Graham's visit, subject to our political and parliamentary convenience and to such arrangements as are possible, will meet with no objection and, what is more, we will always welcome Mr. Graham, as a person, to our country.

Now we come to the subject of the draft resolution. I cannot speak on this because the Council has taken a vote. On behalf of the Government of India, during several meetings I submitted arguments to the Council, whether well or not so well, and on 21 November, after the resolution had been submitted, it was stated that the parties had presented new points of view [805th meeting, para. 82] However that may be, none of that has altered the situation. We do not intend, therefore, to analyse this resolution.

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I am authorised by and asked to state on behalf of the Government of India that we do not accept the resolution. We have accepted no resolutions except the Council resolution of 17 January 1948, and the Commission's resolutions of 13 August 1948 and 5 January 1949. One of the reasons why I have no wish to go into this amended resolution is that it would really be in the nature of an inquest. The Council has passed it and has made its decision. Secondly, we do not want the traditional hospitality of our country to Mr. Graham to be mixed up with any question of discussing this matter.

I have very great difficulty in understanding some parts of the resolution. One part of the resolution contradicts another, and the representative of the United States has not made it any easier by his recent explanation. But, so far as we can see it, the operative part of the draft resolution forms the terms of reference. The preambular paragraphs have some value, and we shall take that into account. Operative paragraph 1 reiterates the Security Council resolution of 17 January 1948 in your terms, but no reiteration is required so far as we are concerned.

I am authorized by the Government of India to say that, as on previous occasions, even on the occasion of the resolution which enabled Mr. Jarring to go to India, there was no question of our acceptance of, no question of our acquiescing in, what has been put in this resolution. We shall offer the traditional hospitality of our country to Mr. Graham, if he goes there.

As I have said from the beginning, we did not bring this question here in the context of the cold war. We have no desire for the cold war to be the dividing line in this matter. It does not lie in our hands.

The Council has seen fit to adopt the amended resolution, and it is before the world and before the Government of India. In quite a telling way, there is a difference between the original resolution as submitted by the five countries and the resolution as amended by the representative of Sweden. I have already

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expressed our appreciation of the efforts of the representative of Sweden, in so far as those efforts were intended to bring the resolution more in line which his report. That is how I understand it, but I regret to say that it does not really bring the resolution in line with his report. However, that does not take away from the effort or from the motive. Therefore, I hope that he will accept, both on his behalf and on behalf of his country, our gratitude with regard to that.

I will communicate the resolution to the Government of India, but I want to place it on record that the only resolution we have accepted is the resolution of 17 January 1948, and we are engaged by the two resolutions of the Commission for India and Pakistan in the terms that I have recited to this Council so many times. That is our position.

The Government of India has also asked me to say that our non-acceptance is not a matter of habit, as it were. The resolution that we could accept—and one which, I hope, the Council will, in time, adopt—would be a resolution in terms of the United Nations Charter, calling upon the aggressor to vacate the aggression. Such a resolution we shall accept and, following that, we would be willing—and not only willing; it would be our duty—to try to implement further the purposes of the Charter and the purposes of this Council. We had hoped that we would not have to talk about acceptance, but it has been put to us by the Council. Acceptance is not provided anywhere in the Charter, but if the purposes of the resolution is to enable someone else to come and talk to the Government of India, we certainly shall not be wanting in hospitality. We shall speak in the terms which I have presented here and which are the views of the Government of India :

It only remains for me to thank the members of the Council for the patience with which they have listened to our very lengthy presentation of this case, but so far as our people are concerned, this issue is one of the invasion of our country; and that invasion must terminate.

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180. *Text of the speech made by Mr. Zafrulla Khan (Pakistan) in the Security Council meeting No. 990 held on 1 February 1962.*

I am very grateful to the President and the members of the Security Council for giving me this opportunity of placing before the Council the present situation with regard to the dispute over the accession of the State of Jammu and Kashmir to Pakistan or to India. It will be necessary, I fear, to sketch very broadly the factual situation behind the dispute ; that is to say the figures and history not of the dispute so much as of the territory itself, before I place before the Council the situation which is causing acute apprehension to my Goverement and anxiety to the people of Pakistan.

The word "Kashmir", which is the eighteenth century, and even in the nineteenth century, used to be spelled "Cashmere", is a familiar word almost around the globe, and calls to mind a romantic land reputed for its art. In one word I might submit that in Kashmir there has been, at least from the middle of the nineteenth century to the middle of this century, a poignant against between the bounties of Providence and the misery as imposed upon man by man.

The expression which is used constantly in the seasons before the Security Council is the "State Governments and Kashmir". It is a composite State made up of two areas—Jammu, which is more or less plains and foothills, and Kashmir, which includes the beautiful Vale of Kashmir and other surrounding areas. The population of the composite State is just over 4 million. According to the last census, which was held in 1941, 77 per cent of the population were Moslems. In the valley of Kashmir itself, the proportion of Moslems was very much higher—just over 93 per cent.

The acute state of the miseries and tribulations of the people of Kashmir began early in the year 1846, the year in

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which the British defeated the Sikh rulers of the Punjab and took over the administration of the Punjab. This changes from Sikh rule to British rule was embodied in the Treaty of Lahore of 9 March 1846, and the handing over of Kashmir to Maharajah Gulab Singh was effected through the Treaty of Amritsar which was signed a week later on 16 March 1846.

It was a purely financial transaction. It is needless to recall to the members of the Council that the British at that time were represented in the subcontinent as agents of the East India Company, and, though the operations of the East India Company had for a long time gone much beyond mere commerce, the payment of dividends was still one of the principal duties of the directors of that company. Consequenty, there was a financial aspect of the Treaty also. Gulab Singh was asked to contribute a sum of 7.5 million rupees to the expenses of the war that had just been concluded, and as the result of which the British occupied the Punjab. But they were "nanak shahi" rupees, as they were then called : I have ascertained that the value of a "nanak shahi" rupee today would be 15 cents, so that the total amount of the contribution was approximately $ 1,100,000. In return the British handed over to Maharajah Gulab Singh all the hill territory between the River Ravi and the River Indus. The word "Kashmir" is not mentioned and it is curious that one of the documents already referred to by me in the earlier debates of the Council states that Gulab Singh stole the amount from the treasury of the defeated Sikh rulers of the Punjab. Nevertheless, as soon as he took possession of that territory a period of stark misery started for the people, so much so that within a year Lord Lawrence himself, then the Governor-General of India and a party to the Treaty of Amritsar of 16 March 1846, had to write quite a severe letter to the Maharajah calling to mind his duties as a ruler. And the Resident, as he used to be called, the agent of the Governor-General in the Punjab who conducted relations with the Indian States, was even severer in his letters and reminders to the Maharajah. This is not the occasion for me to go into details and to recall them all to the members of the Council. But facts like this are mentioned : "My dear

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friend, I understand that you have proceeded even to tax grass and other such articles in your territories." Anyway, those conditions continued more or less for 101 years.

During the nineteen thirties, quite an active movement for the assertion of elementary human rights and for the obtaining of representative institutions started in the State, a movement with which everybody outside the State was in complete and enthusiastic sympathy. In the forefront of this movement was the Prime Minister of India, Pandit Jawaharlal Nehru, who later became, even before partition, the head of the Provisional Government of India. This movement included the "Quit Kashmir Movement", which called upon the late Maharajah Hari Singh, to call the State. This movement was led by Shekh Abdulla, who had the full support of the present Prime Minister of India. For initiating this movement, Sheikh Abdulla was condemned to a long term of imprisonment. But when he was under trial for his alleged offence of treason—it would be of interest to the members of the Security Council to know—Jawaharlal Pandit Nehru, in his enthusiasm for the movement and also on account of his friendship with Sheikh Abdulla, went to Srinagar, the capital of Kashmir, and offered to defend Sheikh Abdulla as counsel in his trial. To the best of my knowledge, Pandit Jawaharlal Nehru had never been in legal practice, or he may have practiced a little, but he is a qualified and competent lawyer. But the Maharajah would not permit that, and the Pandit was sent back out of the State, though it had been announced that within a few days he would be the head of the Provisional Government of India.

After these preliminary facts of history, I might spend a few minutes on the geographical juxtaposition of the State of Jammu and Kashmir vis-a-vis Pakistan. All the three main rivers of Kashmir, the Jhelum, the Chenab and the Indus, flow directly into Pakistan. Both the main roads (one of which later branched into two) which before the partition ran from Kashmir into India, still run from the State into Pakistan, though one of them - the one out of Jammu—is not of much use now.

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The principal particle of export which originated in the forests of Kashmir was timber, which came down the two rivers, the Chenab and the Jhelum, into Pakistan, and came to the timber market at Wazirabad, Sialkot and Jhelum. Another principal item of income for Kashmir on account of its loveliness and the bounties to which I have already referred was tourist trade. The main tourist trade came from the areas which are today Pakistan. The principal port of export and import was Karachi. But much more than all this were the cultural affinities which bound and still bind the people to Kashmir to the neighbouring province of Pakistan, so much so that throughout thousands of families have been divided between Kashmir and West Pakistan, with some members living in Kashmir and others in Pakistan.

For all these resons, when independence came there was an upsurge of longing among the people of Kashmir to participate in that full independence, to be rid of the rule of the Maharajah and to accede to Pakistan.

The scheme of the Indian Independence Act, 1947, was that while what was known as the British provinces would become independent in the shape of Pakistan and India, contiguous Muslim majority areas in the north-west and the nort-east forming Pakistan, and contiguous majority non-Muslim areas in the rest of India forming India. The problem of the Princely States, as they were called, was resolved through the machinery, the foundation of which was laid in section 7 of the Indian Independence Act ; that is to say, Britain withdrew or renounced its suzerainty over the Princely States and left them free to accede either to India or to Pakistan, whichever they desired. But Lord Mountbatten, then Governor-General and Viceroy of India, advised these States that in coming to their decision as to which of the two dominions they should accede, they should consider the geographical contiguity as well as to the wishes of their people. He said : "You can escape neither the one nor the other."

In spite of this advice, it appears that the Maharajah

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Hari Singh, whom I have already mentioned, had different designs. He did enter into a stand-still agreement with Pakistan in order that the matters which by treaty used to be looked after by Britain should still be looked after, and that there should be no gap or interruption. This provided for such matters as post and telegraph services, security and all the relationships that he had with Britain. Nevertheless he would not make up his mind with regard to accession one way or another. This caused deep anxiety among the people of the State, particularly the Muslims, and a freedom movement started at Poonch, that part of the State which had been a feudatory of the Maharajah, the rulers being the senior line of Maharajah Gulab Singh.

As I have said, I shall not go into too much detail, suffice it to say that this movement gathered force and the result was that the Maharajah in person took command of his forces to put it down. He proceeded to do so ruthlessly and, according to the account published by *The Times* of London of 10 October 1947, 237,000 Muslims were exterminated.

Members of the Council will realize that this would cause great inflammatory uprisings in those areas and would also upset and perturb people in the neighbouring areas of Pakistan, when they remember the close ties to which I have already alluded. This feeling continued and spread over into the tribal areas, from which tribesmen poured into the Vale of Kashmir to assist this freedom movement. Maharajah Hari Singh was repudiated over the greater part of the State and he left Srinagar, the capital of Kashmir, and went to Jammu. He naturally was trying to obtain help to stem this tide of the freedom movement, because his own forces had proved inadequate, and he turned to India for military assistance. He was advised by Mr. V.P. Menon, then Political Secretary in the Government of India—the same name but I believe, no connexion with the Defence Minister of India—that he should offer accession to India, which he did. That accession was accepted by Lord Mountbatten, then the Governor-General—and I shall

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say so advisedly just now but without going into further detail—on condition that the question of the accession of the State to Pakistan or to India should be finally decided by the freely expressed wishes of the people. That is where this question of accession on the basis of the freely expressed wishes of the people originated.

As a side observation, I might submit that during recent years, it has been repeated more and more that India will negotiate the settlement of this dispute only on the basis of its sovereignty over the whole of the State of Jammu and Kashmir. Again I shall not go into detail but shall only say that the very question of sovereignty can be decided only by the freely expressed wishes of the people. After all, that is what accession means. The question of accession can be decided only by the freely expressed wishes of the people of the States. Therefore the question whether the State of Jammu and Kashmir adheres to the sovereignty of Pakistan or to the sovereignty of India can be decided only by the freely expressed wishes of the people of the State.

India's position over the accession appears very clearly from the several statements made before the Security Council. I shall refer to only one here. On 23 January 1948, Mr. Setalvad, representative of India on the Security Council, said :

> "The Indian Government was careful, even though the request came from both,"—he means the Maharajah and the leader of the people, Sheikh Abdullah—"to stipulate that it was accepting the accession only on the condition that later, when peace had been restored, the expression of the popular will should be ascertained in a proper manner. It was on that condition, and that condition alone, that the Indian Government accepted accession."

As a matter of fact, even much earlier, in his telegrams to the Prime Minister of Pakistan, the Prime Minister of India had

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said that very clearly. In his telegram of 27 October 1947 he had said :

> "I should like to make it clear that the question of aiding Kashmir in this emergency is not designed in any way to influence the State to accede to India. Our view, which we have repeatedly made public, is that the question of accession in any disputed territory or State must be decided in accordance with the wishes of the people, and we adhere to this view."

In another telegram he was pleased to state that he gave this pledge not only to the Government of Pakistan but also to the people of Kashmir and to the world. That again is the basis of the whole effect of Pakistan ; that those pledges shall be carried into effect.

It is true—it needs not even to be pointed out—that these pledges, these declarations, these messages from one Government to the other, said : when the tribesmen have withdrawn and law and order have been restored, the wishes of the people shall be ascertained through a free and impartial plebiscite. Those two conditions also were inherent, and it is obvious that a plebiscite could be held only after the disturbances that were taking place had been quelled or got rid of, but those were the only two conditions.

On 1 January 1948 India brought the matter to the Security Council, where it has been pending during the last fourteen years. I will not again go into the history of what the Council did, the draft resolution that it first put forward and the resolution that was eventually passed on 21 April 1948. But suffice it to say that the Security Council set up the United Nations Commission for India and Pakistan—composed of three members and later enlarged to five—and instructed it to study the matter and seek a settlement on the basis of a free and impartial plebiscite in accordance with the resolutions of the Security Council.

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The Commission went over to the subcontinent in July 1948 and entered into negotiations with the two Governments. In the meantime a change has taken place in the situation in Kashmir itself. After the Security Council had concluded its consideration of the case, at that stage, it was found that India was preparing to mount an offensive in Kashmir, probably in accord with its wish, several times expressed in the Security Council, that the Council should concern itself only with the aspect of getting rid of the tribesmen from Kashmir and that the rest would be managed by India. Anyhow, when that military offensive was about to be launched the then Commander-in-Chief of Pakistan made a report to the Government of Pakistan of the very serious consequences that might result from that military offensive making progress, and Pakistan then put in its regular army to hold the line.

When the Commission arrived in Karachi, on the very first day that I had the honour to receive its members—as I was then Foreign Minister—I brought the whole situation to their notice in detail, with the aid of maps and dispositions and so on. The Commission had referred to this matter in its first interim report as a material change in the situation; in consequence the Commission several times made changes in its proposals for a resolution in order to meet India's objections arising out of the presence of Pakistan troops on the Azad Kashmir side, which subsequently was divided between the two sides by the cease-fire on 1 January 1949.

I have referred to this matter inasmuch as it will be found, later on in the discussions, that a good deal of reference is made to this fact in order to build up the charge that Pakistan is an aggressor in "Azad" Kashmir. This question of aggression, this question of troops on both sides, was, as I have said, discussed backward and forward during the summer of 1948 between the Commission and the two Governments. Finally, the Commission proposed a resolution on 13 August 1948; as it could not be accepted at that stage, mainly by the Pakistan Government, the Commission elaborated part III of the resolution, which

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related to the holding of a plebiscite, and that elaboration took the shape of a second resolution, supplementary to the first, known as the resolution of 5 January 1949. Both these resolutions were accepted by both sides and became the international agreement between them, as they were recorded also by the Security Council, with reference to the settlement of the dispute.

In April 1949, the Commission called upon both sides to put forward a scheme called the "demilitarization of the State", in order to carry out those parts of the resolutions which related to the withdrawal of the Pakistan armed forces from the Azad Kashmir side of the cease fire line of 1 January 1949 and the bulk of the Indian army from the Indian-occupied side of Kashmir. But no progress could be made with that as no plan was agreed upon. And that is really where the matter got stuck. Again, this is not the stage to go into the question of whose default it was—if there was default. But, as no plan of withdrawal could be agrees upon, Pakistan could not begin the withdrawal of its forces, as it was committed to do and is still committed to do under the resolutions of the Commission. Nor could the synchronized withdrawal later of the rest of the Pakistan forces and the bulk of the Indian forces be arranged. That is where the matter stands.

Again, a very brief observation: the representatives of India have said in the Security Council that Pakistan is in default with regard to these resolutions, both because it has augmented its forces in Azad Kashmir, and also because it has not appealed to its people and the people under its control for the creation of conditions which would enable the plebiscite to be held. Both these allegations were contested by Pakistan. The United Nations representative was satisfied that part I of the resolution had been implemented.

Another allegation is that part I of the resolution of 13 August 1948 has also not been complied with. With regard to certain clauses of this part, both the Commission and the

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United Nations representative have affirmed that it has been cemplied with. The tribesmen had withdrawan long ago, and other people who had entered the territory of the State from outside, on the Azad Kashmir side, had withdrawn. The only question now is to know when the withdrawal of the troops is to begin. The Indian stand is that Pakistan was to begin the withdrawal and to withdraw its troops before India was under any obligation to do the same. On the other band, Pakistan considers—and it will be borne out by the explanations of the Commission and also the reports of the United Nations representative – that a truce plan has first to be agreed upon under section C of part II of the resolution of 13 August 1948. Once it is agreed upon, Pakistan is to begin the withdrawal, and then the withdrawal is to proceed in a synchronized manner until the whole of the Pakistan troops, on one side, and the bulk of the Indian troops, on the other, have been withdrawn.

That, again, is a necessary part of the history. I have again not tried to apportion blame.

The being the situation, suggestions have been made that the questions in dispute, being more or less questions of fact—has Pakistan done or not done what it was bound to do under the resolutions?—might be settled by arbitration. For instance, in February 1957, Mr. Gunnar V. Jarring, representative of Sweden, when President of this Council, was requested by the Council to proceed to the subcontinent and to see whether he could move the matter toward a settlement. He found that the settlement was obstructed by this allegation on one side and its denial on the other side, and he aggregated that the question of whether Pakistan had or had not complied with its obligation might be settled by arbitration, in the sense that by arbitration it might be determined what the actual facts were, and if, in fact, there had been some default in eompliance, what that default was, so that it might be repaired. Pakistan accepted that position; India did not accept that position.

The representatives of India generally said that acceptance of arbitration on any aspect of the dispute is somehow incom-

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patible with India's sovereignty. In that connexion, and again without entering into arguments, I would beg to draw the attention of the Council to Article 51 of the Constitution of India, where as one part of the directive principles of State policy it is laid down: "The State shall endeavour to encourage settlement of international disputes by arbitration." Not only would it not be incompatible with the sovereignty of India, but it would be in absolute accord with the Indian Constitution and in compliance with it, if arbitration were accepted with regard to any aspect of these matters which may be in dispute. Nevertheless, there it stands.

The present position is this: the last resolution of the Security Council was adopted on 2 December 1957. Operative paragraph 2 reads as follows:

> "*The Security Council,*
>
> ". . .
>
> "*Requests* the United Nations representative for India and Pakistan to make any recommendations to the parties for further appropriate action with a view to making progress toward the implementation of the resolutions of the United Nations Commission for India and Pakistan of 13 August 1948 and 5 January 1949 and toward a peaceful settlement."

Mr. Frank P. Graham, the United Nations representative for India and Pakistan. has made many diligent efforts and several wise proposals with regard to the achievement of the purpose that was laid down in this resolution. He again proceeded to the subcontinent and made a report on 28 March 1958, almost four years ago. I have no doubt myself that when the Security Council comes to start a consideration of the merits of the dispute, it would no doubt feel that it would be helped considerably if, in addition to his report, it also heard the views of the United Nations representative with regard to the present situation.

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The United Nations representative had also recommended that parties should try to make progress toward the settlement of the dispute by negotiations between themselves. He had even suggested a meeting of the two sides under his auspices. That was not agreed to, but the recommendation remained that they should try to agree between themselves. Accordingly, several attempts at negotiations were made.

These attempts were made on 15 September 1959, when the President of Pakistan met the Prime Minister of India at the airport in Delhi and again, during May 1960, when both the President of Pakistan and the Prime Minister of India were participating in the Prime Ministers' Conference in London and had several opportunities of getting together to see whether any progress could be made; then at Karachi and Rawalpindi in September 1960, when the Prime Minister of India, in response to an invitation extended to him by the President of Pakistan, visited West Pakistan and they had various meetings where attempts were made to move the matter towards a settlement. But unfortunately no progress was made.

At the end of these meeting the Prime Minister of India invited the President of Pakistan to visit him in Delhi where they would discuss the matter again. The President pointed out that their discussions in Karacni and Rawalpindi had failed to make any progress and if they were merely going to go over the same ground again there would not be much profit in their meeting together, but that if the Prime Minister of India undertook that he would either settle the dispute or at least make a move towards the settlement of the dispute, the President would be very happy to go to Delhi and to meet him.

And there the matter rested. Within the last two or three days the Press has reported the statement of the Prime Minister of India that he has renewed his invitation to the President to visit him in Delhi.

The position of the President of Pakistan is still the same. He would be happy to go to Delni if there was any indication

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that during their meeting they would try to settle the dispute or at least agree upon some method which would be bound to result in a settlement.

At this stage I might also make a comment on the announcement made in the Press that the Prime Minister of India has renewed an offer of a no-war declaration between India and Pakistan, which he had also suggested to the first Prime Minister of Pakistan, the late Liaquat Ali Khan. I then had the honour of being the Foreign Minister of Pakistan, and I am fairly familiar with the somewhat lengthy correspondence that then ensued between the two Prime Ministers. In response to the invitation of the Prime Minister of India that the two Prime Minister make a declaration of that kind, the Prime Minister of Pakistan stated that the tension existing between the two countries—the two countries were in a state of tension at that time also—would not be eased merely by a declaration that there would be no war between the two countries. The tension had its origin in the disputes which were pending between the two countries and that so long as the disputes continued and no way could be found of settling them, the tension would continue. Merely saying that we would not fight over it would not help. The Prime Minister of Pakistan therefore made the following counter proposition: let us first make an effort at the settlement of our disputes. If we find that a prolonged effort is necessary, then let us agree upon a procedure for the settlement of our disputes through negotiations, through mediation, through any channel that may be acceptable to both sides, but finally provide that if any of these methods does not bring us to a settlement of the disputes then we shall have recourse to some procedure which would automatically bring a settlement like international arbitration or judicial settlement. Having agreed on this procedure, we could then made a no-war declaration and proceed to satisfy our people: "Do not worry over these things, do not get excited if time passes over these processes because ultimately if we cannot do it by agreement, by negotiation or by mediation, we shall settle these disputes through a process which will be automatic". That was not agreed to by India, and that is why the question of a no-war

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declaration hung fire and that is what still stands in the way of this declaration.

The Prime Minister of Pakistan pointed out that a mere verbal declaration would serve no purpose. For after all, we are both under obligation, being parties to the Charter being Members of the United Nations, to seek peaceful settlements, a peaceful method for the settlement of our disputes. What would a no-war declaration add to that? But if a no-war declaration is designed to bring peace to the minds of the peoples on both sides, and to bring co-operation in many matters over which we can usefully and beneficially co-operate both for ourselves and for the world at large, then we must agree upon some procedure which will take our disputes to a settlement. And that is the position as it stands.

Unfortunately, during the last month and a half or so, tensions have again mounted and they have mounted up to a dangerous degree, so much so that declarations of responsible people, leaders in India, people in official positions, though hedged and conditioned by certain general declarations, have created a sense of crisis in Pakistan, as apprehension, a foreboding that perhaps on this occasion it might be difficult to maintain peace between the two countries. In deference to my friend Mr. Jha, for whom I have great respect—I even have affection for him; our personal relations are extremely good—I might say (otherwise he would be forced to say it) "All right, the fault does not lie only on one side, it lies on both sides." Assume that on both sides things have been said or things have been done which have contributed toward the spiraling of the tension.

But there is no denying the fact that tension exists, and the Security Council, being the organ of the United Nations carrying the principal responsibility for the maintenance of international peace and for the resolving of situations and disputes that threaten the maintenance of peace, is now faced with a very grave and specific responsibility.

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Let me now place before the Council some of these declarations which are part of the material that tends to show that the situation is of the kind that I have described. Before I do so, however, I should like to point out the reasons why these declarations raised apprehensions, even though, taken just generally and without any specific situation, they may not have amounted to a threat or raised any apprehensions.

The Indians now generally say - particularly the Defence Minister of India - that Pakistan is in forcible and illegal occupation of part of Kashmir, meaning thereby the Azad Kashmir area. Repeatedly it is said that Pakistan is an aggressor against India, that Pakistan has committed aggression, that Pakistan continues in aggression and that aggression must be vacated; if that aggression cannot be vacated through peaceful means, the area under the control of the Pakistan forces must be "liberated"—and I use the word "liberated" within quotation marks, its significance having become different from the mere meaning of "making free".

When these declarations are read against that background, each one of them constitutes, in the eyes of the Government and the people of Pakistan, a threat to the maintenance of peace. I have given the preliminary explanation so that each time when I read something, I shall not have to explained that it means when in India they say, "We shall not astack," "We shall not go to war with Pakistan", "The aggression must be vacated, and if not vacated, then the area should be liberated".

At the annual session of the Indian National Congress Party at Patna, on 4 January 1962, Mr. Sanjiva Reddy, the President of the Congress, during the flaghoisting ceremony, which is one of the most solemn occasions in these Party gatherings, asked the Congressmen - and I am quoting from a very well-known paper published in Delhi, *The Times of India*, of 5 January 1962—to take a pledge to get the Chinese and Pakistan aggressions vacated as had been done in the case of Goa:

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"Under this flag, let us assure the Prime Minister and our Government that every one of us, in a disciplined way, is behind them in any step the Government may like to have these aggressions vacated.

"The whole country will be behind the Government in its efforts to liberate the part of Kashmir which is under the forcible occupation of Pakistan. Let us hope in a short period—of course the Government has no choose the appropriate moment—the Government will give relief to that part of Kashmir also."

This one extract alone would be enough to show what are the feelings being publicly expressed in India with regard to this situation.

Another member of the Congress Party, Dr. Ram Subhag Singh, who is a member of the Indian Parliament, and on that occasion - and this is taken from *The Statesman* of Delhi of 5 January 1962:

". . .the time had come when Pakistan and Chinese aggression on Indian soil had also to be ended. Even though Pakistan was in military alliances like SEA TO and CENTO, it was quite clear that India would not tolerate its aggression on Kashmir for long. It would be good if the Chinese also realized that their aggression in Ladakh and other areas would be vacated by armed force if necersary."

And then these are the actual words used by Dr. Singh :

"Both China and Pakistan should know that India would take steps to end their aggression on Indian soil just as it had ended Portuguese aggression in Goa."

The Statesman of 6 January 1962, under dateline of 5 January, reported from the headquarters of the Congress session:

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"The resolution" – that is to say, the resolution on international affairs at the Congress session to which I believe my friend Mr. Jha has made reference in his letter of 16 January addressed to the President of the Security Council [S. 5060]—" bracketed two neighbours—China and Pakistan—as aggressors 'who continue to be in illegal and forcible occupation of our territories' . . .An angry note can through most of the debate on the resolution.

"Member after member demanded immediate action by India to vacate the aggression by China and Pakistan, and more than one of them demanded action in three months . . .

"The even tenor of the debate was rudely shaken up by Mr. Radhananda Jha (Bihar), who angrily demanded, through an amendment, fixation of a three months period for the vacation of the aggression on India by China and Pakistan . . ."

Also from *The Statesman* of 6 January, I read the following:

"Mr. Jagat Narain Lal was angry at the circuitous way of saying things, as was evident particularly in that part of the resolution which referred to the aggression in India. He demanded a declaration 'from this platform of the people of India' that the aggression on India by China and Pakistan would be vacated immediately. He said sandalwood gave a sweet and soothing smell, but if it was rubbed too hard it would also light fire. So he warned hostile countries that they should not try to take advantage of India's policy of non-violence and peaceful coexistence."

The weekly *Blitz*, in its issue of 6 January 1962, carried this front-page headline: "After Goa we clean up Nagaland to clear the decks for Pakistan and China." The report itself, first drawing attention to the situation in Nagaland and the action

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which should be taken against the Nagas to suppress their "rebellion"—an internal matter for India which I shall not enter into before the Council - concluded by saying:

> "Elimination of the festering sore in the Naga area should be seen as the prelude to preparing the people to tackle effectively the two remaining problems, the Pakistani and Chinese aggression."

The Times of India, of 7 January 1962, in reporting the speech of the Defence Minister of 6 January, had this to say:

> "An equally important declaration on Kashmir came from Mr. Krishna Menon who spoke on the international situation immediately after Mr. Nehru at the morning session. About 42,000 square miles of Indian territory was under the occupation of Pakistan. He said that Pakistan 'must vacate the aggression' if peace was to be established. India, he added, did not have an aggressive policy towards Pakistan and would for its part 'abide by its commitments to the United Nations'. But he hastened to add that 'we shall not have other people interpret these commitments as they wish'. Kashmir was an inalienable part of India."

I quote again from *The Times of India* of 7 January:

> M. V.K. Krishna Menon, Union Defence Minister, speaking on the resolution on international affairs at the open session of the Congress here, said: "According to our agreement with the British and also according to the United Nations resolution, the whole territory of Jammu and Kashmir is a part of the India. Union as much as Bihar is a part of India'. . . Pakistan had no right to be on Indian territory and if peace had to be maintained 'we have no option but to safeguard our security'."

The meaning is clear. It is really begging the question when Mr. Menon says that according to the agreement with the

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British and also according to the United Nations resolution, the whole territory of Jammu and Kashmir is a part of the Indian Union. I respectfully submit that there is no basis for this submission, but I shall not enter into their question at this stage.

The weekly newspaper *Link* of 14 January 1962, reporting the proceedings of the annual session of the Indian National Congress, said :

> "Kashmir and the India-China border issue, which naturally came up for discussion at Patna, brought forth some clear affirmations of Indian policy. The Prime Minister did not speak much on these subjects. He left it to the Defence Minister to reiterate India's position. On Pakistan, the Defence Minister said: 'India would abide by its commitments, but it would not allow others to interpret them as they wished".
>
> "The Defence Minister's reference to Kashmir and the Prime Minister's description of the recent utterances of the Pakistan dictator as betraying a diseased mind left many All-India Congress committee members wondering whether new developments were in the offing."

That kind of feeling does not exist only in Pakistan. It existed in the Congress session itself.

Under the dateline Bombay', 20 January, *The Times of India* of 21 January 1962, reports the following:

> "Mr. Menon said that Pakistan should first vacate its aggression in Kashmir, withdraw the battalions of Azad Kashmir forces and the armed police in the area and stop the psychological warfare against this country as a prelude to negotiations. Addressing a public meeting under the joint auspices of the Bombay Pradesh Committee and the Bombay Kashmir Committee, the Defence Minister declared that if there was a 'serious breach' of the cease

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fire line by Pakistan, India would not hesitate to retaliate."

I shall quote again from *The Statesman* of Delhi of 22 January 1962, dateline Bombay, 21 January:

"Mr. Menon said there was nothing foreign about India's foreign policy which was only an expression of her nationel sovereignty. If China or Pakistan, which had occupied 42,000 square miles of Indian territory, did not vacate, India would not take the initiative in any war-like action. But he said that did not mean that India was any less determined to repulse the aggressor. It could be done either by negotiation or through other methods, but when and how this would be done should be left to the Government because it could not be discussed in any public meeting, Mr. Menon added."

The Times of London of 25 January 1962, under dateline Delhi, 24 January reported the following with regard to the Prime Minister himself, who was speaking at Ferozepore just across the rivers in West Pakistan:

"An audience of 50,000 people in this frontier town heard Mr. Nehru say that India had to keep an army on the Punjab frontier because it did not trust the intentions of Pakistan. 'I still hope that the time will come when the rulers of Pakistan will see that they are following a useless course' - he said - 'Sometimes you get fed up with this attitude of perpetual hatred and hostility of Pakistan towards India. We have repeatedly said we do not want war with Pakistan, but at the same time we are not to be cowed down through threats. The rulers of Pakistan have not understood this basic thing'."

The editorial of *The Times of India* of 25 January 1962, said :

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> "The Indian Government can never agree to a plebiscite which seeks to undo the accession of the State. Any peaceful settlement must be based on the premise that its accession to India is final and irrevocable."

This is in face of the many declarations made by the representatives of India before the Security Council, that the choice is the free choice of the people of Kashmir and that even if this should entail the amendent of the Constitution of India, that amendment would be undertaken.

The Free Press Journal, in its issue of 29 January 1962, publishes a report alleging increased hostile activity—by Pakistan—both from across the cease fire line io Jammu and the State's regular borders. The report concludes : "Pakistan itself has doubled the number of infantry divisions in occupied Kashmir." I will not even discuss whether that is so or not, but assume for the moment—not that I am accepting it—that what is alleged has happened, that adds to the tension, it does not ease it in any manner.

In the *Hindu* of Madras of 31 January 1962, under date-line Bombay, 31 January 1962, the following is stated :

> "Indian Defence Minister, Mr. Krishna Menon, in a statement, ruled out a plebiscite as solution for the Kashmir problem. He said : 'As long as there is a Government in the country worth its name, there will be no plebiscite to decide future of Kashmir'. He also said mediation of this issue was impossible, and there will be no negotiations on the motif of surrender of our sovereignty."

Now, when it is said repeatedly that the method of negotiations has not been exhausted, I should like to be told, in view of this declaration, what scope is there for negotiations ? What are the parties to negotiate on ? "That no Government worth its name will ever agree to the plebiscite", "mediation on this issue is impossible", "there will be no negotiations on the

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motif of surrender of our sovereignty"—do these expressions hold out any promise for negotiations ? And when that expression is used – "surrender of our sovereignty" – it means giving up, whether or not as the result of a plebiscite, of any portion of the State of Jammu and Kashmir.

The Hindustan Times of today states :

> "Defence Minster said in Delhi on 31 January that India had rejected Kennedy's mediation because there could be no arbitration on the country's sovereignty. "—Nobody had suggested that— "India has always been opposed to mediation because it would be tantamount to equating the aggressor with the victim".—The aggressor being Pakistan and the victim being India—"Moreover, there was no country which could mediate the Kashmir issue without being india."

Finally, I would like to submit this to the Council. In the first place, though there is a dispute and a very serious dispute over the question of the accession of the State of Jammu and Kashmir to Pakistan or to India—between India and Pakistan —the primary people affected by this dispute are the people of Kashmir. The fundamental question involved here is the self-determination of the people of Kashmir, their right to decide their own future freely without interference from one side or the other. Again, I will not go into the question of apportioning blame or praise, but assume for one moment, for the sake of argument, the propositions (we contest every aspect of it) that Pakistan is the aggressor, that India is the victim, that Pakistan is in forcible and illegal possession of parts of the State, that Pakistan has committed this default, that crime and is in contravention of resolutions, whatever you like. But does that mean that if Pakistan is to blame, that Pakistan had committed default that Pakistan is an aggressor, the people of Kashmir have lost the right of self-determination ? Even if there had been no agreement at all, that right remained.

But the agreement is contained first in Lord Mount-

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batten's condition attached to the aceptance of agression. It has been said that the acceptance of the accession is contained in the two words, "I accept" and signed "Mountbatten": it was only in an accompanying letter that a wish was expressed that the final decision would be through the freely expressed wishes of the people; unfortunately that wish cannot be fulfilled. There is no question that merely a wish was being expressed. Responsible ministers of India itself and its representative here, have stated that the acceptance of the accession was conditional on the final decision being made by the freely expressed wishes of the people of Kashmir. Mr. V.P. Menon himself, who was in a sense the author of the Maharaja's accession, states it clearty in his book. That is the fundamental thing which must govern the situation.

It is sometimes said : "Well, the situation has continued for fifteen years and is now more or less stabilized. It would be a pity to disturb it. Why uproot everything ? Why not be content with what exists and then let us talk about adjustment." I do wish very solemnly to assure the members of the Council that not fifteen years, but if 150 years were to pass this dispute will not be settled except through the freely expressed wishes of the people of Kashmir. That is their right and they are enitiled to exercise that right.

It is said that the Pakistan representativc has quoted from individuals speeches in his letter of 11 January 1962 [S/5058]. Subsequently, I suppose, also regarding my letter of 29 January [S/5068] it will be not that I have quoted expressions of views by individuals but that the resolution adopted by the Congress was that through peaceful methods a settlement of disputes should be reached. It is true, but there are two answers to that the resolution itself cites the so-called aggression of Pakistan against India in respect of Kashmir ; secondly, though the resolution talks of peaceful methods, yet both before and after, respresentatives of India, and ministers, in spite of their resolutions have gone on talking of getting the aggression vacated. If peaceful methods would not get it vacated early then, there would be a "liberation" through means which also have been hinted at quite plainly.

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In an official pamphlet issued on behalf of the Government of India in January 1962, entitled *Kashmir and the United Nations* it is stated quite clearly with respect to this so-called aggression, "India is prepared to be patient and tolerant...but it is obvious that there is a limit to patient and tolerance." If this is not a threat of the use of armed force, what would be clearer ?

But the situation remains. I will say again, take it at its very least, that newsparers, individuals—both responsible and irrespousible - leaders, even ministers on both sides have said things which contribute to this tension. But this tension has become very sharp against the backgsound of the things which I have brought to the notice of the Security Council. Therefore, the first duty of the Security Council is take steps to ensure that no recourse shall be had to threat or the use of force for the purpose of a settlemet of the dispute, and that this shall be made so clear that the tension would be eased and people will stop thinking that there may be a armed action, by one side or the other, tomorrow or the day after tomorrow or next week or the week after that.

I should like respectfully to draw the Security Council's attention to the geographical position of Kashmir. I have mentioned other factors in the beginning.

Kashmir, on its norh-west corner. abuts on Afghanistan — at least the territories that used to be included in Kashmir; across a very narrow strip of territory, on the USSR; then, over a whole stretch of territory, on China; and finally, with regard to its western, southern and eastern side, on Pakistan and on India. Sometimes expressions are used which say that India will not invade Pakistan, that India will not attack Pakistan, and if anything occurs of the kind not only hinted at but expressly stated in these extracts that I have read out to the Council with regard to the so-called vacation of aggression or liberation of the Azad Kashmir area, that technically may not be an attack by India against Pakistan. It might be

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claimed to be a mere vacation of aggression and it might be said that if there is subsisting aggression, vacating aggression is not itself aggression but the right of self-defence. However, it is not necessary for me to emphasize that the conflict that then might ensue would be bound to spread and would not be confined merely to Kashmir, as the earlier fighting was. And in view of the geographical juxtaposition of which I have just spoken—I will not sketch the picture any further– members of the Council can easily conclude for themselves that if a configration starts in that area it will not be confined the subcontinent or even to the whole continent of Asia.

I therefore submit that you gentlemen whom providence has placed in a position of awesome responsibility—you often carry on your shoulders the responsibility not to let things slide into chaos and confusion and later into conflict, and to stop the rot in time and make every possible effort to resolve through peaceful methods situations and disputes that threaten the maintenance of peace—should take this very grave situation into consideration and do the utmost to discharge the responsibility you bear on behalf of the whole world.

Today the membership of the United Nations is composed of 104 sovereign States. The permanent members of the Security Council are there of their own right; the non-permanent members are the representative of the remaining Members of the United Nations. Together you represent the whole world and you are entirely responsible to the whole world. I shall not take up your time longer than to say that your first obligation is to secure that nothing untoward of the kind that I have submitted happens. Your second reponsibility is to take up the consideration of the dispute and bend all your earnest, zealous energies towards securing a settlement of it on the basis of justice and equity and to secure to the people of Kashmir the exercise of their right of self-determiniation in that respect I have no doubt that you will start, when you come to that consideration, with the latest report of the United Nations representative for India and Pakistan, and, as I have already

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stated, I have no doubt that you will wish to see it representing the situation today and not merely the situation that subsisted four years ago.

181. *Text of the speech made by Mr. Jha (India) in the Security Council meeting No. 990 held on 1 February 1962.*

Allow me to thank you, Mr. President, and the members of the Council for giving me the opportunity to make a brief statement.

The representative of Pakistan, in his letters of 11 and 29 January 1962 [S/5058 and S/5068], alleged that efforts for direct negotiations had failed and that there was a grave threat to the maintenance of peace in the Kashmir region. In the statement we have just heard he has elaborated and embellished the same theme I have already, on behalf of my Government, stated in my letter of 16 January 1962 [S/5060 and Corr. 1] that these contentions of the Pakistan Government and their representative are completely unfounded, and that the Government of Pakistan is deliberately attempting to exploit the Council as a propaganda forum against the Government of India. Nothing the representative of Pakistan has said today alters that position. On the contrary, it furnishes confirmation of the attempt to build up an artificial and wholly false impression of Pakistan's being threatened by India.

I have asked to be allowed to appear before the Council not for the purpose of participating in a substantive discussion of the question of Kashmir or of making detailed refutation of the many charges and allegations which have just been made in the statement of the representative of Pakistan. The time for that will be at a later date when the Council is in a position to hear the representative of the Government of India, and we hope that the meeting will be held after the elections and after the formation of a new Government.

In our view, since the last meeting of the Security Council when this question was considered [808th meeting] in 1957, no

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new factor has emerged to merit letter of 16 January that there is no basis for the allegations made and that there is no urgency whatsoever for the consideration of the Kashmir question by by the Council. Now that India is on the eve of general elections of unprecedented magnitude in its history involving an electorate of nearly 210 million registered voters, the present time is hardly appropriate—for reasons which it is not necessary to elaborate—either for direct negotiations between the two Governments or for discussion of this question in the Security Council.

This question, as the Council is aware, has a history of fourteen years, and it was last considered by the Council in December 1957. At that time also Pakistan brought up the matter on the eve of general election. It is obvious that, on grounds which appear to us to be specious, Pakistan has again tried to take advantage of the Indian Government's preoccupation with the election. We are deeply disappointed that the Council, in its wisdom, did not think fit not to have a meeting now as requested by us. The convenience of the Indian Government has not been consulted and, overriding out objections, the validity and force of which have been acknowledged to us by many members in conversation, the Council has thought fit to hold a meeting. As I have already stated, it is highly inconvenient for the Government of India to take substantive part at this time in the Council's discussion of the Kashmir question. I have, therefore, been instructed by my Government to request the Council to defer the discussion of the matter to some appropriate time after the Indian general election to enable the new Government to participate fully in the discussions.

While making this request I should like to take the opportunity to state briefly but categorically that there is no threat of use force to Pakistan from India. We have repeatedly made it clear that we shall not attack Pakistan or use force against Pakistan. We have made it equally clear that if attacked we shall defend our-

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selves. That has been always our position, and that is our position today. Members of the Council are aware that on numerous occasions my Government has offered to enter into a simple, unconditional no-war declaration with Pakistan. The object of this was to create an atmosphere free from any apprehension, and thereby to facilitate the holding of any negotiations or discussions between ourselves for the settlement of this issue. That offer stands, and it was repeated yesterday in a public statement by the Prime Minister of India. The representative of Pakistan has also referred to the suggestion made by India for a no-war declaration, but he has said that Pakistan wanted first certain matters to be settled, and that in particular it wanted the processes for the settlement of the Kashmir question to be decided upon before it could enter into a no war declaration.

However, if Pakistan has a sense of fear or apprehension of an attack, of aggression by India or of whatever else it might be called, would it not be in Pakistan own interest to accept our offer today and sign a declaration that these should be no war, leaving all our problems be settled by peaceful discussion?

That is the position that I would like to bring before the Council. But from the leaders of Pakistan and from the Pakistan Press comes a constant barrage of threats of using "other means", including the use of force for the "liberation" of Kashmir, and appeals to religious fanactism and "jehad", which means holy war.

I have here before me several volumes of reprints of such published statements. One of these is already on the records of the Council, and perhaps at suitable time my delegation will take the liberty of circulating these volumes to the members of the Council for their perusal. It is not my intention to burden the Council with these at the present moment. I shall only cite two instances.

On 7 October 1960, according to the newspaper *Dawn* of Karachi, the President of Pakistan declared: "The Pakistan

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army as a defender of the mother land could never afford to leave the Kashmir issue unsolved for an indefinite time", and as late as a few days ago, according to *The New York Times* of 21 January 1962, he announced his intention to use arms supplied them by the United States Mutual Security Act against any-one, irrespective of United States wishes, whom he considered a threat to Pakistan. And today the representative of Pakistan tells us that Pakistan is threatend by India.

I only mention these facts and I leave it to the members of the Council to place them in juxtaposition in order to view this matter in the right perspective. I also do so to show that the complaint of threat by India to Pakistan is nothing but, if I may use the expression, a bogy. If we were disposed to come to the Security Council in connexion with such statements, I dare say that this august body would be perpetually in session, because these volumes are a testimony to what I am saying. I dare say that the representative of Pakistan can also find some statements which have been made in India. As a matter of fact the campaign against India of the character to which I have just referred that comes from Pakistan is so great that occasionally it is a fact that there are reactions in India and statements are made. But I would say that the scale is very much weighted on their side by statements against India and provocative utterances and incitements to "liberation", "jehad", and so forth.

The representative of Pakistan has picked out a few statements, notably one said to have been made by Mr. Sanjiva Reddy, the President of the Congress Party, some weeks ago at a flag-hoisting ceremony. But as a matter of fact, subsequently at the very same Congress session and after a thorough discussion of the Government's foreign policy, the Indian National Congress formally adopted a resolution which the representative of Pakistan has quoted and which I shall also quote.

> "The Congress emphatically supports the Government in its policy in regard to our neighbouring States, Pakistau

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and China, who continue to be in illegal and forcible occupation of our territories. The Congress considers that consistent with India's basic policy and methods, the Government should seek all avenues of peaceful settlement and approves of the policy of the Government in the all aggression".

You will find in this very quotation that India wants to seek all avenues of peaceful settlement. What more can a responsible political party say ? After all, this is a declaration of a political party.

Grievance is made of the fact that we call the occupation of a part of Kashmir by Pakistan an aggression. It is true we say that, but we do not just say it today. We have been saying that for the last fourteen years. That was the case with which India came to the Security Council, namely that there had been aggression and an invasion of Kashmir. But the mere fact that we adhere to our point of view cannot be regarded as aggressive or as a threat to Pakistan. I really fail to understand that argument

Is it not clear from what I have just read out from the resolution of the Indian National Congress, which is the largest political party of the country, that we are in favour of peaceful settlement of our disputes with Pakistan, including the question of Kashmir ?

In his letter of 29 January to the Security Council, the representative of Pakistan quotes a statement from the *Tribune* of India of 12 July 1961 said to have been made by the Defence Minister of India. In this statement itself the Defence Minister has clearly stated : "We do not want to settle down to a war situation We still stand by the commitiments we have entered into. But if aggression comes, we are determined to and we will meet it. For our sovereignty, dignity and honour are involved in Kashmir".

I very respectfully submit that this is not a war-like

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statement. On the contrary it is, as the Council knows, a reaffirmation of something which we have stated again and again and which is our basic position, namely that there has been aggression aginst India in Kashmir and that Kashmir is integral part of India. Also, we have stated in the Council time and again since 1948 that this aggression must be vacated, and when we say that we mean to say vacated by peaceful means. It is a reaffirmation of our intention to defend our position in Kashmir and to prevent any further aggression. Surely it is given to a responsible minister of government to state the determination of his government to defend the territory of his country and its rights. Such a statement, incidentally, one sees almost every day in the Press by members of Governments of many nations sitting round this very table in the Security Council.

Grievance is made of the statement of the Defence Minister of India on 20 January 1962 that India was prepared to negotiate with Pakistan any time on the Kashmir issue "but not on the basis of surrender of our sovereignty". Again this is quoted in the letter of 29 February from the representative of Pakistan to the Security Council. Now what is wrong with this statement ? It is a plea for negotiations without surrender of sovereignty, to which none can really object.

In his letter of 29 January again, the representative of Pakistan alleges troop movements in India. He complains of "the continous deployment and redeployment of Indian forces within easy striking distance of Pakistan borders". The Government of India officially described as baseless these persistent reports appearing in the Pakistan press about the concentration of Indian troops on the border of Pakistan. It so happens that traditionally a part of the Indian army has been stationed and garrisoned in north-west India for the normal defence of the country. Undoubtedly there are seasonal and incidental movements of army groups including those for exercises and manoeuvres which have no policy significance. None of the troop movements within India that may have taken place in recent weeks had any relation to Pakistan.

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This position, I might add, was explained by the Prime Minister to one of the Ministers of Pakistan who called on him in New Delhi in the early part of January. And I am sure that the representative of Pakistan will himself agree that such army movements, manoeuvres and exercises also take place on the Pakistan side close to our borders from time to time.

The representative of Pakistan has sought to impress the Council with the grave threat to Pakistan. In our view, no rational basis for any such apprehension exists, and I should like to place before you some statements from my Prime Minister which should leave no ground for apprehension.

Speaking in the Lok Sabha (the Lower House), on 16 August 1961, the Prime Minister said :

> "We want Pakistan to co-operate with us, and we shall co-operate with them because that is a normal thing for two countries, any two adjoining neighbouring countries to do, more especially with a country like Pakistan which has been a part of us—I am saying even now ; there are so many contacts, human contacts, apart from geography cultural and historical contacts, but somehow, all this is almost wasted."

He was referring to the negative approach of Pakistan. The Prime Minister, speaking in the Rajya Sabha (the Upper House), on 22 August 1961, stated :

> "We are not going to take any military measures to push out the Pakistan Army or the controlling apparatus from that area."—This means the area under Pakistan occupation—" It is our right, and we are prepared to consider that when the time comes in a peaceful way."—and I should like the Council to note this—" That is going pretty far, as the House will apprectate, when we say that we are not going to take any military steps in that area which is occupied by Pakistan."

What can be clearer than this statement ?

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At a press conference in New Delhi on 28 December 1961 the Prime Minister, among other things, said : "We have always agreed to talk with Pakistan on this subject as on every other subject. We have never refused."

Again, at the annual session of the All-India Congress on 6 January 1962 the Prime Minister stated that India wanted friendship with Pakistan. He said :

> "There are many things in common between the two. India and Pakistan for thousands of years have remained one. Our language, our food, our dress are the same. We are almost one nation. Pakistan was formed by partition. It was done by the agreement of India. We do not what that this should be changed."

There are many more statements of this nature right through the years and up to the present time—up to the last few days as a matter of fact. These are statements by the Head of the Government which Pukistan wishes to make out is threatening the territory of Pakistan.

In his letter of 29 January 1962, the representative of quotes from *The Times* of London of 25 January 1962—and the representative has repeated this here—in which the Prime Minister of India is reported to have said that India "had to keep an army on the Punjab frontier because it did not trust the intentions of Pakistan".

I have not seen any authoritative report but let us assume that is a correct version of what the Prime Minister said. Let us look at the facts. After the events of 1947 and 1948, when Pakistan-aided tribesmen and Pakistan forces invaded Kashmir, and in the context of the statement and the cries for "jehad" raised in Pakistan, can India be blamed for taking precautions ? But this does not affect our determination to seek settlement of our outstanding problems with Pakistan peacefully and through negotiations and to live in friendship with it and indeed with all our neighbours.

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India has always made it clear, and I repeat now, that patient discussions and negotiations and the continuing search for a possibility of accommodation are the only accepted ways of reaching an amicable settlement. As recorded in *The New York Times* this morning the Prime Minister has stated only yesterday : "We have clearly said that whether they [the leaders of Pakistan] agree with us or not on any point, we will not start a war against Pakistan."

It is a continuing policy of India to settle its disputes with Pakistan by negotiation and through peaceful means. The Prime Minister of India has sent an invitation to President Ayub Khan for a visit to Delhi to talk over the differences between the two Governments. We hope that this invitation will be accepted and that nothing will be said or done, either inside the Council or in Pakistan, to spoil the atomsphere of the talks after the general elections.

I have deliberately made various quotations from our Prime Minister because I should like to show that there is no desire in India, and I repeat there is no desire in the Government of India, to settle our difference with Pakistan by any but peaceful means and by negotiations. It is the earnest desire of the people of India and I think I may say without fear of contradiction that it is the desire of the people of Pakistan—that we should live amicably, because we are neighbouring Countries. History and geography have made us not only neighbours, but close neighbours bound together by ties of ancient history and culture. That is our hope, that is our wish, and that is the desire of the Indian people.

Having said this, I go back to where I started from and I would urge that the Security Council should defer its consideration of this matter until a convenient time in the future which is agreeable to Pakistan and to India after the Indian general elections and the formation of the new Government, with a view to giving the new Government of India an opportunity after the general elections to participaten

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fully in the discussions in the Security Council and make its submissions to this Council.

The PRESIDENT : I have no further speakers on my list, and if there are none I will presume to make some comments as President of the Council.

Members of the Security Council have heard statements by the representatives of Pakistan and India concerning this question and if I interpret their remarks correctly I believe both Governments have indicated their desire to deal with the differences between them on the Kashmir issue in a peaceful manner and without the employment of force. Next, members of the Council will also have taken note, I believe, of the statement by the representative of India that it would be more convenient for his Government to explain its views on this question more fully after the conclusion of the elections now under way in India.

In the light of these assurances of peaceful intentions which the Council has heard, and of the comments to which I have referred, I understand that members of the Council feel that any further consideration to be given to the question by the Council should be deferred, possibly until some time after 1 March, and then resumed after consultation with the members of the Council and the parties. Meanwhile the Security Council will continue to be seized of this issue.

In conclusion, therefore, I take it that the members of the Council would urge the parties to refrain from any use or threat of the use of force in connexion with this problem, and I take it that it is also the consensus that nothing should be done or said by either of the parties or by others to aggravate the situation or increase existing tensions. As President of the Security Council, I urge those directly concerned, as well as members of the Council and of the United Nations, to co-operate in these endeavours. If there is no objection, I would conclude with the suggestion that in the light of this consensus

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of views the Council should adjourn its deliberations on the basis I have stated.

Mr. ZORIN (Union of Soviet Socialist Republics) (translated from Russian): I have but one remark to make in connexion with the President's statement, with which my delegation is in argreement.

As everyone knows, the USSR felt that the urgent convening of the Security Council on this item at the present time was unnecessary and uncalled for, and objected to the meeting being held. Since, however, the President has convened the Security Council at the insistence of certain powers, the USSR delegation believes that the best we can do now is to postpone further action, as the President proposes, particularly in view of the Statement just made by the Indian repesentative.

That is all I had to say in signifying agreement with the President's view.

182. *Text of the speech made by Mr. Zafrulla Khan (Pakistan) in the Security Council meeting No. 1007 held on 27 April 1962.*

Before lunch this forenoon, my friend. Ambassador Jha, the representative of India, honoured me by conveying to me a message from the Defence Minister of India. He told me that the Defence Minister much regretted that, having regard to his heavy responsibilities and manifold preoccupations, he had not been able to reach New York in time to be present here this afternoon and that he hoped I would not consider this as any lack of courtesy on his part. Far from considering that the Defence Minister of India has in any way been lacking in courtesy, I would have considered it impertinent on my part to feel that he was under any obligation to be present here this afternoon or at any other time when it was not convenient for him. And I conveyed these sentiments to Mr. Jha. I further

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assured him that if the Minister had any feeling of embarrassment over the situation which had arisen owing to his being required at various places at the same time, I was quite willing to join him in making a request to the President that if it was not too inconvenient for the members of the Council and would not upset their arrangement, the meeting might be post poned to some date, at least next week, which might be convenient for the members of the Council. Mr. Jha, however, assured me that was not his desire and that he would feel perfectly happy, and he was quite sure that the Defence Minister would feel perfectly happy, if the Council proceeded, according to its schedule, with the meeting this afternoon. I therefore now feel that I am at liberty to address the Council despite the absence of the Defence Minister, and I am sure that in the circumstances the Defence Minister of India will not consider that I have in any manner, on my side, been lacking in consideration for him if he desired to be present to hear whatever I have to say on the question.

I had the honour to make, having regard to the complicated nature of this problem, what I might describe as a somewhat summary presentation to the Council on 1 February [990th meeting]. I much feared that on this occasion, when the adjorned discussion has to be resumed, I would be under the necessity of going into some detail at least on certain aspects of the problem which are crucial for the proper understanding of the differences that have arisen between India and Pakistan over this question. I did, I believe, make a brief reference to position of the Indian States as distinguished from British India at the advent of independence in the summer of 1947.

The Security Council has heard a good deal and will hear a great deal more about the accession of the State of Jammu and Kashmir to India or Pakistan which is in question, but at this stage it is necessary to say something on this subject of accession itself. What was the origin of this idea ? So far as the Independence Act of 1947, an enactment of the British Parliament, is concerned, it makes no reference to the accession of States to one Dominion or the other, as both India and

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Pakistan were to be at the start of independence. All that the Act says in that connexion is contained in section 7, which provides in effect that on the appointed date—that is to say, on the date of independence—the suzerainty exercised by the British Crown over these States and treaties and engagements which subsisted between the British Crown, and the rulers of these States would come to an end.

What would then be the position ? The Act does not define it and there are few precedents in constitutional history of any comparable situation which may have arisen before ; as a matter of fact, there are hardly any. One clear indication that we have is from Mr. Ayyangar, the representative of India, when he addressed the Security Council, in the early days of the dispute, as to what would be the position with regard to the Indian States after they had become, as it were, independent under the Indian Independence Act. I will come to that in a moment.

I should have said that there is a clear indication in the White Paper issued by the Government of India on 10 August 1948, which states :

> "The Government of India are firmly of the view that whatever sovereign rights reverted to these States on the lapse of paramountcy (that is to say when British sovereignty ceased to operate) they vest in the people, and conditions must be created in every State for a free and unfettered exercise of these rights."

Therefore, in this as I have said, peculiar historical constitutional situation that arose, we start with the idea that the sovereign rights that reverted to these States on the displacement of British paramountcy vested in the people.

Now, how did the idea of accession come into the picture ? The idea of accession, in a sense, already held the field. As members of the Security Council may recall if they are familiar with the constitutional history of India previous to

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the Indian Independence Act, there had been various attempts at settlement of this question between the main political parties on the one hand, and the British on the other. And the immediately preceding attempt to the one that culminated in the Indian Independence Act, was made by what was known as the British Cabinet Mission in the summer of 1946. The Cabinet Mission was sent to India by Prime Minister Attlee, and was composed of three distinguished members of the British Cabinet, Lord Pethick-Lawrence, who was Secretary of State for India ; the brilliant statesman and politician, Sir Stafford Cripps, who, I believe, was either Lord Privy Seal or Lord President of the Council at the time : and Mr. A. N. Alexander, who was First Lord of the Admiralty.

It is not necessary to detail their achievement, which was indeed a very notable one. They brought about a settlement by agreement between the Indian National Congress and the Muslim League which was accepted by both, as a result of which the political unity of India could have been preserved. That is a matter of history. But when they studied the problem, they were also faced with a question of what would happen to the Indian States under the scheme which they put forward and which was immediately accepted.

The memorandum of the Cabinet Mission on the question of Indian States, dated 12 May 1946, set forth this idea of accession. It said that the position of States would be strengthened during this formulative period if the various Governments which had not already done so were to take active steps to place themselves in close and constant touch with public opinion in their States by means of representative institutions. Further on the memorandum stated that this meant that the rights of States which flowed from their relationship to the Crown would no longer exist and that all rights which had been surrendered by the States to the paramount Power would return to the States. The memorandum concluded :

> "Political arrangements between the States on the one side and the British Crown and British India on the other

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> will thus be brought to an end. The void will have to be filled either by the States entering into a federal relationship with the successor government or governments in British India, or failing this, entering into particular political arrangements with it or them."

At that time the future shape of the independent Government of India was to be federal, between three zones. Therefore, the idea of finding a place for these States to fill the void that would arise by the withdrawal of British paramountcy was that either the States should be willing to integrate themselves into the federal system or they must come to particular arrangements with the successor government or governments. This is how the idea of accession arose.

Thus far, then, according to the view firmly held by the Government of India, upon the lapse of paramountcy, such sovereignty as reverted to the States vested in the people and it was or is for the people to decide, in order to fill that void, what relationship, in the words of the Cabinet Mission, should be established with either of the two successor governments that emerged.

What were the principles which were to be kept in mind by these States in deciding the question of accession? In theory, each State was at liberty to accede to one Dominion or the other, but certain compulsive considerations had to be kept in mind.

These considerations were enunciated by Lord Mountbatten in an address to the rulers of the States—and I shall, at a later point in my remarks, read to the Council the declaration which he then made. He stated the same principle to the Maharajah of Jodhpur, and this is recounted by Mr. V. P. Menon in his book *The Story of the Integration of the Indian States*, on page 117, as follows:

> "Lord Mountbatten made it clear that from a purely legal standpoint there was no objection to the ruler of Jodhpur acceding to Pakistan: but the Maharajah should, he

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stressed, consider seriously the consequences of doing so, having regard to the fact that he himself was a Hindu that his State was populated predominantly by Hindus and that the same applied to the States surrounding Jodhpur. In the light of these considerations, if the Maharajah were to accede to Pakistan, his action would surely be in conflict with the principle underlying the partition of India on the basis of Muslim and non-Muslim majority areas: and serious communal trouble inside the State would be the inevitable consequence of such affiliation."

He had, in a general manner, in addressing a special full meeting of the Chamber of Princes in New Delhi on 25 July 1947, three weeks before the appointed date for independence, advised the princes as follows:

"It was necessary to set up two States Departments, one in each Government, because the States are theoretically free to link their future whichever Dominion they may care. But when I say that they are at liberty to link up with other of the Dominions, may I point out that there are certain geographical compulsions which cannot be evaded. . . .

". . .

". . . You cannot run away from the Dominion Government which is your neighbour any more than you can run away from the subjects for whose welfare you are responsible. Whatever may be your decision, I hope you feel that I have at least done my duty by the States."

Under this general principle and in application of this general principle to a particular case, as I have already informed the Council, Lord Mountbatten pointed out to the Maharajah of Jodhpur that, as the majority of his subjects were Hindus and as the principle of the partition of India was that contiguous majority areas of one religious community would form one of the independent States and contiguous majority areas of the other community would form the other State, if he acted

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contrary to that principle—although in theory he was free to do whatever he choose to do – it would be contrary to the basis on which the partition had taken place, and he would run into serious trouble.

That, in brief, is the basic situation with regard to this question of accession. With the Council's indulgence, I shall return to this a little later, with regard to its application to Kashmir. However, two matters are clear: first, that it is for the people to decide; and, second, that if a decision is taken contrary to the wishes of the people, then serious trouble will result. As a matter of fact, the principle was later taken further by the Government of India: that any such action would not be valid, would not be recognized, and would have no operation. I shall come to that a little later.

At this stage, I would wish briefly to refer to the conditions under which the Kashmir question arose. For that, also, I am under the regrettable necessity of making a reference – I hope to make it very brief – to some of the extremely tragic happenings that accompanied the birth of India and Pakistan into independence. I am not seeking to lay blame; I am not seeking to excavate things which had better lie buried now. But, in order to understand the background of the question, a brief reference is necessary.

In some of the Indian States—I shall name three: Bharatpur, Patiala and Kapurthala – a serious attempt was made by the rulers to exterminate altogether the community to which the ruler himself did not belong. In two of them, it succeeded to a very large extent: and, in the third, it succeeded completely. The third one was Kapurthala, which also had these two special features of significance: first, that Kapurthala was contiguous to Muslim majority areas in the north-west: second. that in Kapurthala the majority of the population were Muslims. The Maharajah's action was so effective that within a few days only two Muslims were left alive in the Kapurthala State. In which they had formed a majority of the population.

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That is part of the background. I am making no grievance. As I said, it is not my purpose to lay blame. But it is a direct introduction to the question of Kashmir. As you will see presently, these three States were named as having caused the apprehension which led to the disturbances in the State of Jammu and Kashmir.

The Times of London of 10 October 1947 reported that the Maharajah of Kasumir had also undertaken a similar project of getting rid, if not altogether, atleast to a large extent, of what he no doubt thought would be troublesome, and might prove to be unruly, Muslim elements in the State, as they did prove to be, and he put himself at the head of his own forces. This is the report of *The Times* of London, eleven or twelve days before any incursion of the tribesmen took place into the State. I would beg the Council to remember the juxtaposition of the dates, because the Council has already heard and will later hear a great deal about aggression committed against the Maharajah and against the State. This report of 10 October 1947 must have been referring to incidents of a day or two earlier, which would make those incidents a fortnight before the first incursion of tribesmen. The report is very brief, but it is very poignant:

> "Two hundred and thirty-seven thousand Muslims were systematically exterminated, unless they escaped to Pakistan along the border, by all the forces of the Dogra State headed by the Maharajah in person."

It was this campaign of the Maharajah, undertaken by the ruler against his own people, in order to get rid of the majority of his people, or to reduce them to a state of insignificance, or at least to a state of abject terror, that started the whole of this trouble. The people rose, as they were bound to do, because that part of the State where this campaign was undertaken—it then used to be known as Poonch—was inhabited by people a very large preponderance of whom were veterans of the Second World War. They were not like the people of the valley itself,

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who have been unaccustomed to bearing arms. These people had borne arms valiantly and were accustomed to their use.

So a liberation movement started in the State as a reaction to this very drastic action undertaken by the ruler of the State against his own people, whom he was there to defend and to protect, and for whose welfare he had to make provision. That is based on testimony which is incontrovertible. But that this kind of thing, together with what had happened in other Indian States—notably in the three that I have named—was the cause of all this trouble is borne out by the testimony of Sheikh Mohammed Abdullah, who, however much today he may be out of favour—and I may have to revert to that aspect also later, in another part of my address—was at that time regarded by the Prime Minister of India, and by Mr. Ayyangar, who addressed the Security Council on behalf of India, as the undisputed political leader of the people of Kashmir.

Sheikh Abdullah, who had been in considerable prominence in Kashmir since the early nineteen thirties, had, a few years I believe before independence, through his political organization the Jammu and Kashmir National Conference, set in motion a movement agains the Maharajah. It was called "Quit Kashmir"—that is to say calling upon the Maharajah to quit Kashmir—and he had, I believe, the previous year, in 1946, been sentenced to seven years' rigorous imprisonment by the State courts on account of sedition, that is, on account of his leading the "Quit Kashmir" movement. But when this trouble arose in Kashmir, he was released and he was presumably sent to Delhi. He certainly was in Delhi on 21 October 1947, again before the incursion of the tribesmen. But when the liberation movement inside Kashmir was already in full swing, he made a statement in Delhi with regard to the origin of this trouble, which was published. He made it, I believe, in a press conference. In the course of this he was quoted as saying:

> "While Pakistan was very keen on its accession"—that is to say the accession of the State—"owing to the strate-

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gic position of Kashmir, if the State joined the Indian Dominion, Pakistan would be completely encircled."

Then the report of his statement went on to say the following :

"Explaining the difficulties with which the people were beset in making up their minds without responsible government, Sheikh Abdullah said that the happenings in certain States, such as Patiala, Bharatpur, and Kapurthala and elsewhere"—and now the members of the Security Council will be able to appreciate the reference here in the statement of Sheikh Abdullah to these States, and what those happenings were—"had naturally caused apprehension in the minds of the Muslims in Kashmir, who formed the majority of the population. They were afraid that the State's accession to India might portend danger to them. Sheikh Abdullah said that the present troubles in Poonch, a feudatory of Kashmir, were caused by the unwise policy adopted by this State. The people of Poonch who had suffered under their local ruler and again under the Kashmir Maharajah, the overlord of the Poonch ruler, had started a people's movement for the redress of their grievances. It was not communal. The Kashmir State sent its troops and there was panic in Poonch. But most of the adult population of Poonch, he explained, were ex-servicemen in the Indian Army"—they could be called veterans in this country—"which close connections with the people in Jhelum and Rawalpindi"—these are districts of Pakistan—"They evacuated their women and children," —that is to say they evacuated them into Pakistan, knowing that otherwise they would suffer the treatment which had been meted out to Muslims in other States— "crossed the frontier and returned with arms supplied to them by willing people. The present position was that the Kashmir State forces were forced to withdraw in certain areas."

The people who started the liberation movement drove

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out the State forces from the portions of the territory in which the movement had been started, and almost all Muslim personnel of the State forces joined them, so that the situation, so far as the State and the Maharajah were concerned, began to be precarious. Then the incursion of the tribesmen took place on 22 October. Within three days, that is to say, by 25 October, the Maharajah's position in Srinagar became, from the point of view of security, open to grave danger. He left the capital and went to Jammu.

Now, pausing here again for a moment, having regard to the principles to which I have already drawn attention and to which I shall again draw attention later, what was the position with regard to accession ? The factual position was this. The Maharajah had embarked upon the project to which I have already alluded and in reaction, the people had risen against his authority. In certain areas they repudiated his authority and drove out his troops. They were, I believe, within six miles of Srinagar itself when the Maharajah found it necessary to flee the capital and, driving the whole night over difficult mountain passes, reached Jammu the next morning.

Now, Mr. V.P. Menon, who was then what I might describe as the political secretary of the Government of India in charge of its relationships with the Indian States, has given an account of the happenings from then onwards. Mr. Menon had first gone to Srinagar to meet the Maharajah while the Maharajah was still there. He returned to New Delhi to make is report and to hold consultations ; and even then he reported that unless India was ready to help the Maharajah with troops, the Maharajah's authority and rule over the State would soon be brought to an end. He then went to Jammu when the Maharajah had arrived there and held consultations with him. The Maharajah no doubt expressed the desire that he should have military aid from India. Mr. Menon explained to him that the aid could be given to him only if he acceded to India. The Maharajah then wrote the application for accession and accompanied it with a long letter in the course of which he

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mentioned that, as he could not obtain military aid from India otherwise, he was offering accession to India.

Mr. Menon's account describes the situation. I have already given a reference to *The Story of the Integration of the Indian States*. I quote from pages 399 and 400 :

> "We left Srinagar in the first flight of the morning of 26 October and immediately on my arrival in Delhi I went straight to a meeting of the Defence Committee. I reported my impressions of the situation and pointed out the supreme necessity of saving Kashmir from the raiders. Lord Mountbatten said that it would be improper to move Indian troops into what was at the moment and independent country, as Kashmir had not yet decided to accede to either India or Pakistan. If it were true that the Maharajah was now anxious to accede to India, then Jammu and Kashmir would become part of Indian territory. This was the only basis on which Indian troops could be sent to the rescue of the State from further pillaging by the aggressors. He further expressed the strong opinion that in view of the composition of the population accession should be conditional on the will of the people being ascertained by a plebiscite."

I shall repeat that : "accession should be conditional" ; this is the account given by the senior political officer of the Government of India who took part on behalf of the Government of India in these negotiations. He reports that Lord Mountbatten, the Governor-General of India, made it clear that accession should be conditional on the will of the people being ascertained by a plebiscite :

> "...after the raiders had been driven out of the State and law and order had been restored. This was readily agreed to by Nehru and other ministers."

Subsequently, various explanations and glosses have been put upon the actual situation. But here is a gentleman who

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was a principal actor in that situation and he gives us a first-hand account of what happened. He says that Lord Mountbatten said that acceptance of the accession "should be conditional on the will of the people being ascertained by a plebiscite after the raiders had been driven out of the State" and that this was "readily agreed to by Nehru and other Ministers".

I continue to quote :

> "Soon after the meeting of the Defence Committee I flew to Jammu, accompanied by Mahajan."—a retired judge of the Punjab High Court, who had been appointed by the Maharajah as his Prime Minister at that time—"On arrival at the place I found it in a state of utter turmoil with valuable articles strewn all over the place. The Maharajah was asleep ; he had left Srinagar the previous evening and had been driving all night. I woke him up and told him of what had taken place at the Defence Committee meeting. He was ready to accede at once. He then composed a letter to the Governor-General describing the pitiable pliget of the State and reiterating his request for military help. He further informed the Governor-General that it was his intention to set up an interim government at once and to ask Sheikh Abdullah to carry the responsibilities in this emergency with Mehr Chand Mahajan, his Prime Minister."

This is the same Sheikh Abdullah who had previously been sentenced to seven years' rigorous imprisonment, and, as we shall see later, has now been undergoing a so-called trial for over three and a half years, and the trial is nowhere near taking place yet. As a result of this action by the Maharajah, Sheikh Abdullah would be associated with the Prime Minister and an assurance was to be carried to the Government of India, and principally to the Prime Minister of India, that the Maharajah was now surrendering authority to the representative of the people. I continue to quote :

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"He concluded by saying that if the State was to be saved, immediate assistance must be available at Srinagar."

Before I continue to quote further, I want to stress this. The Maharajah's authority, in effect, had not only been repudiated in theory but was hanging by a very slender thread even at Jammu. He had already evacuated Srinagar. There are two very significant factors in this account itself which confirm that, One was the condition in which Mr. Menon found the place at Jammu when he arrived, with valuables strewn all over the place, a state of utter confusion, obviously indicating that preparations were being made for flight. But here is another not only very significant but rather poignant factor in the situation - again I quote :

"He also signed the Instrument of Accession. Just as I was leaving he told me that before he went to sleep, he had left instructions with his ADC that. If I came back from Delhi, he was not to be disturbed as it would mean that the Government of India had decided to come to his rescue and he should therefore be allowed to sleep in peace ; but that if I failed to return, it mean that everything was lost and, in that case, his ADC was to shoot him in his sleep."

That was the value of his remaining authority at that time.

I continue to quote :

"With the Instrument of Accession in the Maharagah's letter I flew back at once to Delhi. Sardar"—meaning Sardar Patel, who was then Minister in Charge of Indian States—"was waiting at the aerodrome and we both went straight to a meeting of the Defence Committee which was arranged for that evening. There was a long discussion, at the end of which it was decided that the accession of Jammu and Kashmir should be accepted,

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subject to the proviso"—previously, it was "conditional upon". Here it is "subject to the proviso"—"that a plebiscite would be held in the State when the law and order situation allowed. It was further decided that an infantry battalion should be flown to Srinagar the next day."

Now, that was the situation in which the so-called accession took place. The intimation of accession having been accepted was coveyed to the Maharajah by Lord Mountbatten, as Governor-General ; and he wrote a letter also to the Maharajah, which is not only relevant to the context upon which I am engaged at the moment, but is also significant. It reads as follows :

"Your Highness's letter dated 26 October 1947 has been delivered to me by Mr. V.P. Menon. In the special circumstances mentioned by your Highness, my Government have decided to accept the accession of Kashmir State to the Dominion of India. In consistence with their policy that in the case of any State where the issue of accession has been the subject of dispute,"—

And here not only the issues of accession was the subject of dispute, the State had well-nigh got rid of the Maharajah altogether. So here is the Governor-General, in a solemn State document, setting forth the policy of his Government, which is that in the case of any State where the issue of accession has been the subject of dispute—

" ..the question of accession should be decided in accordance with the wishes of the people of the State, it is my Government's wish that, as soon as law and order have been restored in Kashmir and its soil cleared of the invader, the question of the State's accession should be settled by a reference to the people."

What could be more solemn, more binding, than that ?

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I was told—and since then, I have confirmed it by looking at the record—that it has been suggested, on behalf of India, that this was no undertaking of an obligation. "It is my Government's wish"—it was observed that this was the expression of a wish ; and, unfortunately, many wishes remain unfulfilled.

With all respect, I will say that this is, to say the least, treating a very solemn matter with a lack of seriousness. In the first place, the expression of this wish must be read with the sentence which is follows ; and the previous sentence expounds the policy of the Government. The policy of the Government is that, where the question of accession is in dispute, it must be settled by the freely expressed wishes of the people. The wish of the Government is inaccordance with that policy. As a matter of fact, even laying emphasis on it, as I have perforce to do at the moment, might be regarded as uncalled for ; there is no need for that ; there is no room for any other interpretation. But even if it is the wish of the Government, the wish of the Government is being conveyed in a solemn document by the head of the Government, the Governor-General, when he is accepting accession, provisionally and conditionally as the expressions have been used – and he lays it down that the final decision can be made only through the plebiscite. I would reiterate : nothing could be more solemn than that ; nothing could be more serious than that. How could anybody, anybody responsible for such an assurance, subsequently seek, as it were, to wipe it away or to explain it away by saying, "After all, it was only the expression of a wish ; and how sad it is, in this life, that so many wishes remain unfulfilled."?

I continue to quote from Lord Mountbatten's letter :

> "Meanwhile, in response to your Highness's appeal for military aid, action has been taken today to send troops of the Indian Army to Kashmir," – they were already there before this letter was signed—to help your own forces to defend your territory and to protect the lives, property and honour of your people. My Government and I note with satisfaction that your Highness has

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decided to invite Sheikh Abdullah to form an interim Government to work with your Prime Minister."

I lay stress upon that also because subsequently, so-called elections have been repeatedly rigged and it is argued that the matter should now be considered as concluded.

We shall have to come to consider whether the matter can be concluded, even if the elections were free, and what was the character of those elections. In that connexion, it would be relevant to invite a comparison with regard to the administration of justice in this State, to see a solemn process in which the Government is never supposed to interfere, and then to decide how a political operation like an election, which can often be rigged—not only in the Indian States, or in India or Pakistan or other places, but even in the much more advanced countries—can be regarded as having disposed of the question. Even a free election could not have disposed of the question, under the obligations of the parties. So then, accession having taken place, troops having been sent to the Maharajah's aid, they cleared the territory of the State of the invaders and of the raiders and those people who were in rebellion against the authority of the Maharajah—up to a certain point. Then, as this process began to appear to be a very lengthy one, the Government of India brought the whole question to the Security Council on 1 January 1948.

Now, in the Security Council, what was the position of India with regard to the accession that had taken place and with regard to the manner in which the question of accession should finally he decided ? On that point there are many extracts to which one could draw attention. I shall, however, confine myself to three or four.

In his telegram of 27 October 1947, the Prime Minister of India had already conveyed the following assurance to the Prime Minister of Pakistan :

"I should like to make it clear that the question of aiding

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> Kashmir in this emergency is not designed in any way to influence the State to accede to India."

That was one Prime Minister to the other ; it is a State document. Naturally, Pakistan was perturbed at the developments that had taken place and that were then taking place, and this was the assurance that the Prime Minister of India conveyed to the Prime Minister of Pakistan. I repeat :

> "I should like to make it clear that the question of aiding Kasnmir in this emergency"—that is to say, to get rid of the tribesmen and of the people that were in rebellion, and to put down the rebellion—"is not designed in any way to influence the State to accede to India. Our view, which we have repeatedly made public, is that the question of accession in any disputed territory or State must be decided in accordance with the wishes of the people, and we adhere to this view."

Then, in a telegram of 31 October 1947, from the Prime Minister of India to the Prime Minister of Pakistan, it was stated :

> "Our assurance that we shall withdraw our troops from Kashmir as soon as peace and order are restored"—nothing could be clearer—"and leave the decision regarding the further of the state to the people of the State is not merely a promise to your Government" – not that it is not a promise to that Government, but rather that it is more than a promise to that Government—"but also to the people of Kashmir and to the world."

Today it is a "wish", and it is said, "unfortunately so many wishes remain unfulfilled." But here the words used are : "Our assurance that we shall withdraw our troops from Kashmir as soon as peace and order are restored and leave the decision"—not the affirmation, but the decision—"regarding the future of the State to the people of the State, is not merely a

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promise to your Government but also to the people of Kashmir and to the world".

Then, in his broadcast over the All-India Radio on 2 November 1947, the Prime Minister said :

> "We have declared that the fate of Kashmir is ultimately to be decided by the people. That pledge" there was the assurance there was the promise ; now there is the pledge – "We have given not only to the people of Kashmir but to the world. We will not and cannot back out of it We are anxious not to finalize anything in a moment of crisis, and without the fullest opportunity to be given to the people of Kashmir to have their say. It is for them ultimately to decide. And let me make it clear that it has been our policy all along that where there is a dispute about the accession of a State to either Dominion, the accession must be made by the people of that State."—I repeat, "the accession must be made by the people of that State" – "It is in accordance with this policy that we have added a proviso to the Instrument of Accession of Kashmir."
>
> In other words, "We accept, provided that .."

Since then the representative of the Government of India here has said : "I have looked at the Instrument of Accession. I find on it only 'Accepted, Mountbatten'. I do not find there any proviso". Is not the Prime Minister of India to be believed with regard to the actual transaction which took place and its legal interpretation, as against his own representative speaking here, however great may be the latter's position in that Government ? The proviso was contained in the letter of the Governor-General. It must be read along with, and as a part of, the Instrument of Accession. The Instrument of Accession is a formal document, drawn up and printed, and it has gaps only here and there which have to be filled in ; the rest of the wording is already there. But there was a letter accompanying it from the Maharajah and there was a letter accompanying the

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acceptance from Lord Mountbatten which contained the proviso. Both must be read together. Under any canon of interpretation, the two documents must be taken together.

On 8 November 1947, in a telegram to the Prime Minister of Pakistan, Mr. Nehru said :

> "It will thus be seen that our proposals, which we have repeatedly stated, are (1) that the Government of Pakistan should publicily undertake to do their utmost to compel the raiders to withdraw from Kashmir ; (2) that the Government of India should repeat their declaration that they will withdraw their troops from Kashmir's soil as soon as the raiders have withdrawn and law and order are restored ; (3) that the Governments of India and Pakistan should make a joint request to UNO to undertake a plebiscite in Kashmir at the earliest possible date."

Then the late Mr. Gopalaswami Ayyangar, before the Security Council on 15 January 1948, in his very first address to the Council stated this :

> "In accepting the accession they"—the Government of India—"refused to take advantage of the immediate peril in which the State found itself and informed the Ruler that the accession shoud finally be settled by plebiscite as soon as peace has been restored. They have subsequently made it quite clear that they are agreeable to the plebiscite being conducted it necessary under international auspices. [227th meeting, p. 20.]

Mr. Setalvad, who I believe is now the Attorney-General of the Government of India, was a member of the delegation which represented India when the question first came before the Security Council. He said:

> "But I make bold to say that the conduct of my Government has been entirely above board in this matter. It was not until the Ruler of Kashmir and the popular leader

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> of Kashmir"—that means Sheikh Abdullah—"approached the Indian Government for assistance in the extremity which I have described, that the Indian Government stated—and I submit, rightly stated—that it could not interfere in the matter of Kashmir unless the State was a part of Indian territory, which could come about only if Kashmir acceded to the Indian Union. On that understanding, in the peril in which it found itself, Kashmir offered to accede to the Indian Union—not only the Ruler, but also the popular leader. The Indian Government was careful, even though the request came from both, to stipulate" - there is the assurance, there is the pledge, there is the proviso, now it is the stipulation— "that it was accepting the accession only on the condition"—

This is the Attorney-General of India speaking, not the Attorney-General at that time, but a man certainly possessing authority on behalf of his Government because he came with credentials to speak to the Security Council. He is now the Attorney-General, a very eminent lawyer. I have had the honour of knowing him for a number of years and I had not, during my six years of office, which I had the honour to hold in India as judge of what is today the Supreme Curt of India, heard anybody abler than Mr. Setalvad address the Court. He says that the Indian Government was careful, even though the request came from both, to stipulate that it was accepting the accession only on the condition –

> "...that later, when peace had been restored, the expression of the popular will should be ascertained in a proper manner. It was on the condition. and that condition alone, that the Indian Government accepted accession." [234th meeting, p. 217.]

On that condition and that condition alone. Today it is "the expression of a wish, and it is much to be regretted that so many human wishes go unfulfilled".

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Even with regard to the argument that the Maharajah had the sole authority, in law, and that when he had acceded and the Governor-General had said "Accepted," there was an end of the business, and that all the rest is the expression of a wish and it does not matter if it has or has not been fulfilled, this is what Mr. Ayyangar stated to the Security Council on 8 March 1948 :

> "No doubt the Ruler, as the head of State, has to take action in respect of accession."

Obviously it is not the whole population of any State that can sign the instrument of accession ; somebody has to do it, who is to act as the instrument on behalf of the real authority.

> "When he and his people are in agreement as to the Dominion to which they should accede, he applies for accession to that Dominion. However, when he takes one view and his people take another view, the wishes of the people have to be ascertained. When so ascertained, the Ruler has to take action in accordance with the verdict of the people. That is our position." [264th meeting, p. 50.]

That has not yet happened.

Here again, it is perfectly clear that the Government of India takes the position that no doubt the ruler will sign the instrument of accession and no doubt a sort of de facto position will arise therefrom, but once a dispute with regard to accession has arisen, when the ruler takes one view and his people takes another view, the wishes of the people have to be ascertained. Now here I must try to draw this distinction. It does not mean merely "subsequently ascertained and then some modification to be made", as it is now argued that the whole thing was complete. It is said : "Oh, yes, yes, if the people had expressed a wish to the contrary, well, perhaps constitutional matters could have been gone through and Kashmir could have been

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unlinked" and so on. Nothing of the kind. The wishes of the people have to be ascertained ; and "When so ascertained, the Ruler has to take action in accordance with the verdict of the people". That is all. If there is no dispute, the action that the ruler takes is complete. When there is a dispute, the ruler must perforce take some action but the action is not complete, it is incomplete. It leads to certain consequences as a de facto position, but in order to be legally complete and valid and binding, the wishes of the people have to be ascertained and when so ascertained, "the Ruler has to take action in accordance with the verdict of the people". This is in the record of the Security Council.

Curiously, even the application of these principles was insisted upon by India in a contrary case. A contrary case had arisen in the State of Junagadh, where again the position was that the ruler belonged to one community and the majority of the people belonged to the other community. The ruler acceded to Pakistan, but at a time when there was no dispute nor any expression of wishes on the part of his people regarding which of the two Dominions he should accede to. But let that go. Later there was a dispute ; when his people came to know of it, quite a substantial number of them apparently did not like it. So a difference arose and therefore the question was disputed. What was the position taken up by the Government of India on that ? The Governor-General of India in a telegrame dated 22 September 1947, addressed to the Governor-General of Pakistan, said the following :

> "The Pakistan Government have unilaterally proceeded to action which it was made plain the Government of India could never and does not acquiesce in."

First, kindly consider the implication that, in such a case, action should not have been unilateral – not unilateral in the sense that Pakistan declared that such and such a State had acceded to us without the consent of the ruler : the ruler had offered accession and accession had been accepted, the same as in the case of Kashmir, although this happened much earlier;

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but unilateral and the sense that one Dominion could not unilateral act without the concurrence of the other.

> "Such acceptance of accession by Pakistan cannot but be regarded by the Government of India as an encroachment on India's sovereignty and territory. .."

Here the accession offered by the Maharajah of Kashmir, whose authority had been repudiated over almost the entire State, even if provisionally accepted, makes Kashmir the territory of India. In a contrary case also where Pakistan accepted the accession offered by a ruler of his State, the territory belongs to India. If you win, you win ; if you lose, you win.

> "... and is inconsistent with the friendly relations that should exist between the two Dominions. This action of Pakistan is considered by the Government of India to be a clear attempt to cause disruption in the integrity of India by extending the influence and boundaries of the Dominion of Pakistan, in utter violation of the principles on which partition was agreed upon and effected."

"In utter violation of the principles on which partition was agreed upon and effected"—what were those principles ? That contiguous majority areas of one community were to constitute Pakistan and the contiguous majority areas of the other community were to constitute India. On that test alone, put forwad by the Government of India itself, Kashmiar is a contiguous Muslim majority area, contiguous to Pakistan – a Muslim area. The matter does not require further consideration, even with regard to whose sovereignty and whose territory is involved. I continue the quotation :

> "The possibility of Junagadh's accession to Pakistan dominion, in the teeth of opposition from its Hindu population of over 80 per cent, has given rise to serious concern and apprehension on the parts of the local

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population and all surrounding States which have acceded to the Indian dominion."

Curiously, even the proportions in the population are almost the same. In Junagadh there was a Hindu majority of about 80 per cent and in the composite State of Jammu and Kashmir there is a Muslim majority of 79 per cent.

"Large-scale preparations in Junagadh and the supply of arms and ammunition to its Muslim subjects, with obvious intention of terrorizing the people of the State as well as the surrounding States, accentuated the uneasiness and the Government of India received appeals for suitable action, both from the people and these States. The Government of India have therefore sent a small force for troops to their own areas as a very nautral counter-measure, particulary as most of our acceding States in affected areas have on arms of their own."

Then these armed forces marched in and took possession of the State and that possession is still with India.

What view did the Security Council take of the Kashmir dispute when it was brought here ? That is important from this point of view. It is not merely history which can simply be waved aside. The dispute was fresh ; fighting was going on. It was imperative that the fighting be stopped, so that the question of the accession of the State could be decided and law and order restored. That was the first step. I shall trouble the Security Council with just a few extracts from what was said.

When the question was taken up on 15 January 1948 in the Security Council, the President of the Council was Mr. Langenhove of Belgium. He observed on 22 January 1948 :

"... both parties have admitted in principle that the future of the State of Jammu and Kashmir should be decided by plebiscite. The communication from the

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Government of India to the President of the Council, dated I January, states that, in the final analysis, the people will be free to decide their future by the recognized democratic method of a plebiscite or referendum, which might be held under international auspices in order to ensure its complete impartiality. That declaration was confirmed in a statement by the representative of India on 15 January before the Council [227th meeting]. The same principle may be noted in the Pakistan representative's communication of 15 January to the Secretary—General."

"Such is the basis upon which the Security Council is to carry out the mission invested in it by the Charter in the matter that has been brought before it." [231st meeting, p. 165.]

Efforts were also made on behalf of India to persuade the Security Council that it should take action to have the raiders withdraw and the rebellion put down and to leave the rest to India. That is the position which, as will be shown, the Security Council repudiated entirely.

On 24 Jaunary 1948, Mr. Warren Austin said in the Council :

"It seems to me, in determining whether there is a situation which, if it were to continue, might lead to a dispute or to war, that we have before us an opportunity to make progress in the right direction, through the continuation of the entirely friendly and informal conferences under the guidance of the President of the Security Council. My country thinks that these conferences should be continued in the real spirit that animates India and Pakistan here, and that they should not be interfered with here by the necessary presentation of charges, counter-charges, claims and so on that have to go into the record.

"...

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"... It seems to me that our advice to the two parties should be—and that is what they are asking for when they come here—that the Kashmir matter, without prejudice to the other question ;"—because the other question here also been raised in the documents which filed on behalf of Pakistan—complete the negotiations that are now pending ; and, with respect to the media and methods of creating those conditions in which a fair plebiscite can be held, arrange an interim government that is recognized as free from the smell of brimstone, as nearly impartial and perfect as two great countries like India and Pakistan can make it, in which the rest of the world will have confidence as being fair." [235th meeting p. 261.]

Mr. Noel-Baker, since then a recipient of the Nobel Prize for Peace and at that time Secretary of State for Commonwealth Relations, representing the United Kingdom during the discussion of this question before the same meeting of the Security Council, said :

"Having heard the parties, I want, with, equal understanding, with equal friendship, and, if they will allow me to say so, with equal love for both, as a member of the Security Council, sharing our collective responsibility to mankind, to ask the question : What ought the Security Council now to do ? I hope we shall fasten our attention on the constructive parts of what our colleagues from India and Pakistan have said.

"...

"... The representative of Pakistan last week and again today, and the representative of India when he opened the matter and again yesterday, gave us their accounts of how the communal troubles happened over the last two years. I do not intend to discuss the tragic features to which they drew attention. To my mind the process of causation is still wrapped in mystery. No doubt these troubles came out of history, and I hope they will soon

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disappear into history again. The interest of everyone is to forget the past and to concentrate on the future.

"...

"... Both parties have told us that they want peace with justice. Both have told us they want the will of the people of Kashmir to prevail. The representative of India stated this yesterday, and the representative of Pakistan stated it today. Our task is to formulate a plan by which that can be done. Let us press forward with that work." [*Ibid.*, pp. 256 and 259.]

Mr. de la Tournelle, the representative of France said at the same meeting :

"I think that the Commission's first task should be to organize a plebiscite as soon as possible. In that connexion, I think that the speediest procedure would be to continue consultations between the two parties, under the President's auspices, in order to establish the conditions in which that plebiscite should take place.

"Personally, I would suggest three conditions :

"1. The withdrawal of foreign troops from the State of of Kashmir.

"2. The return of the inhabitants, irrespective of their race—Hindu or Muslim—to their place of origin in that State."

"3. The establishment of a free administration which would not exert pressure on the population and would give absolute guarantees of a free vote." [*Ibid.*, p. 263.]

On 28 January 1948, Mr. Noel-Baker said in the Council :

"The cause which is now in dispute here, the cause of the fighting in Kashmir, is the question : To which of the

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two Govenments, India or Pakistan, shall Kashmir accede? In my conception, infinitely the best way to stop the fighting is to assure those who are engaged in it that a fair settlement will be arrived at under which their rights will be assured. In other words, as I remarked to the representative of India in our first talk after his arrival, in my profound convication, a settlement arrived at quickly in the Security Council is the real way to stop the fighting. The whole thing, from the preliminary measures as to the fighting, right up to the conduct of the plebiscite in the end, is all one problem. Only when the combatants know what the future holds for them, will they agree to stop." [236th meeting, p. 283.]

Mr. Warren Austin, speaking before the Security Council on 4 February 1948 said :

"In the first place, I should like observe that the Security Council does not try, under the Charter, and is not trying, to decide between litigants, opponents, or parties to a situation or difficulty. ..

"...

"It is my opinion that if and when the Security Council deals with this problem, it must consider it as a whole, because unless it does, there cannot be a cessation of hostilities. How is it possible to induce the tribesmen to retire from Jammu and Kashmir without warfare and without driving them out ? That is the only way it can be done, unless the tribesmen are satisfied that there is to be a fair plebiscite assured through an interim government that is in fact, and that has the appearance of being, non-partisan. Only by that method could one hope to have that retirement on a peaceful basis.

"We know very well that the alternative is force, and force which has not necessarily been successful when the frontier is reached. The passage of the tribesmen across

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the frontier does not mean that hostilities have been ended. On the contrary, I think that reason indicates that hostilities will have only just began if an attempt is made to reach a separate solution of this matter and to have the troops get out of Jammu and Kashmir merely because we say so, without our having said to them that we are going to consider all sides of the question and that the plan involves not merely a retirement but also a plebiscite by which the people will register their own choice in the main issue, that plebiscite to be guaranteed to be impartial and just. Nothing short of that is conceivable as a peaceful means of accomplishing the withdrawal of these armed forces from Jammu and Kashmir.

"I wish to have one point definitely understood. The Security Council is not partial it is not prejudging ; it is not discriminating between the paties and their claims ; it is not brushing a side the claims of any one." [240th meeting, pp. 367, 369 and 370.]

I intend—and I trust I will be able to do it when I come toward the close of my submission to the Security Council – to stress one aspect which was stressed here by the late Mr. Warren Austin : that nobody should deceive himself that, merely by covering over the question, it will be settled. If the Security Council does not want the elements in the State who started the liberation battle to start it again, if the Security Council does not desire that the tribesmen should get out of hand and pour into Kashmir again, if the Security Council does not desire that the people of Pakistan should get out of hand and—if I may mix the metaphor—take the bit between their teeth and run away with the whole system of ordered government, and if the Security Council does not desire that poweful neighbouring States should plunge into the vortex when it starts again, the Security Council had better take note of the realities of the situation.

What can be done ? The problem is there. As I had the honour to submit the last time I spoke before the Security

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Council [990th meeting], so much has passed. Yes, fifteen years. But anybody who goes into Kashmir on either side, on the side occupied by India or on the "Azad" Kashmir side, if he were to try to get in touch with the people without any representative of the authorities being present or being within earshot, would come away convinced, as everybody who has done that has come away convinced, that the question is as acute today as it was in the fall of 1947 and the spring of 1948—indeed, throughout the year 1948 until the cease-fire was arranged on 1 January 1949. And if it boils up again, it will not then be confined to where it was confined in those days—a local struggle in the State of Jammu and Kashmir.

This is by no means, I beg to assure the Council, any kind of threat whatsoever. Pakistan, from the bottom of its heart, does not desire any such development. But Pakistan is convinecd that, unless the question is set toward settlement at a fairly early date, that is what is bound to happen.

Mr. Arce, representative of Argentina, also speaking on 4 February 1948 before the Security Conncil said :

> "Now that the dispute between India and Pakistan have been submitted to the jurisdiction of the Securiy Council, the delegation of Argentina will not be able to vote in favour of any draft resolution which does not leave the solution of the problem to be decided by a plebiscite, freely prepared, freely conducted and freely scrutinized under the authority of the Security Council.
>
> "Some discussion has taken place, in my opinion, mistakenly, on whether the order for cessation of hostilities and the order for the holding of the plebiscite should be issued successively or simultaneously. In order to solve a problem, and especially a problem of this nature, it is necessary to know the underlying causes. It is worthwhile remembering the Latin proverb, which says *sublata causa, tollitur effectus*, or, in other words, remove the

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cause and the effects will disappear. In this case, the cause of all the disturbances, whether from India or Pakistan, or from the tribes, lies in the rebellion of the people of Kashmir against the absolute monarch who rules them as if he were running a farm and 4 million inhabitants were so many heads of cattle and not human beings."—And that was the cause that brought about all this trouble -- "If therefore, in accordance with the provisions of the Charter already quoted, we assure these human beings that they themselves will be able to decide their own fate freely and without pressure from any quarter, I am sure that they lay down their arms, I am sure that the tribes will withdraw to their own territories and I am sure that India and Pakistan, having submitted to the decision of the] Security Council of the United Nations, the Organization to which they both belong, will be able to come to an understanding and maintain the friendliest relations with one another, thus proving that they are really 'peace-loving people'." [240th meeting. pp. 366 and 367.]

Now I shall quote from the statement of Mr. de la Tournelle of 5 February 1948 :

"At the time of drafting the report of the Commission of Investigation concerning Greek Frontier Incidents and during the Security Council's discussions of that report, the French delegation maintained that the establishment of responsibility for the Balkan disturbances was relatively unimportant, and that the Council's only duty was to work out a plan of pacification which would assure that part of Europe of a peaceful future. It seems to me that this wise attitude should be followed in our study of the Kashmir question, and that the Security Council should try to put before the parties concerned, for their volutary acceptance, a suitable solution to end the dispute which separates them..,

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> "My delegation thinks the organization of a free plebiscite in Jammu and Kashmir would be the most effective and possibly the only means of stopping hostilities in those States, as it would give the population the assurance that they would be free to decide their own fate. Our main preoccupation, therefore, should be the organization of a plebiscite." [241st meeting, pp. 3 and 4.]

The late Mr. Faris El-Khouri, representing Syria, said the following on 5 February 1948, at the same meeting :

> "It is quite clear, as I stated before, that recommendations with regard to the cessation of fighting are of no use if they are not connected with substantial assurances to the parties which will satisfy them and place them in the definite position of knowing that their demands will be fulfilled and consecrated by the processes recommended by the Security Council." [*Ibid.*, p. 14.]

Now I have said enough, although one could have multiplied these statements. I beg to apologize to the Security Council and to my learned friends the representatives of India for, as it were, delving into history. I have done this to emphasize one point. There seems to be an attitude, which is not confined to India—and I shall be forgive if I make bold to say that I have seen signs of it among the members around this table also –to this effect : "Oh, fifteen years have passed and, after all, the fighting came to an end. So why not accept things as they are today ?"

I would again beg the forgiveness of the Council and of the representatives of India for asking if, in view of the declarations which I have read, you would not agree with me that it would amount to cheating the people of Kashmir ? Here was member after member of the Security Council—occupying the most responsible position in the international world which anybody can occupy today, representatives of eleven States, representing the whole of humanity—sitting here and solemnly assuring these people, who, like their ancestors, had endured a

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tyranny of the worst type ever witnessed in any part of the world, under which, as I believe I said on an earlier occasion, it was difficult for a Kashmiri to decide which was the greater misery, to be alive or dead. Having arisen under those conditions of misery to seek a way out and not to continue to be subjected to them any further, having had recourse to arms, having made all sacrifices, they brought the matter here. And here they were given solemn assurance after solemn assurance. They were assured, "The decision is in your hands". In placing their fath in those assurances, they stopped fighting. I say again, would you not agree with me that, to say the very least, it would be cheating those people to say that those assurance today have no meaning at all, in view of the glosses, the excuses, the legal documents put forward ? And I shall come to them; I shall deal with them; I shall attempt to give a reply to everything which has been brought to my notice. I hope I can satisfy the Security Council that they have no substance.

But assume that I fail, or assume that I satisfy the Security Council or a majority of the Security Council, but fail to satisfy India, as appears likely to be the case, what then is the duty of the Security Council ? It is to took into all factors, to see whether they are valid, to see whether they really are the cause of obstructing the path towards a settlement, and, if they are, to determine whose fault it is. I say here and now, and I shall repeat it later when I have dealt with those matters, I say with full responsibility that if a fair and impartial determination—it does not matter what shape it takes– is made by the Security Council, if there is a pronouncement by the Security Council, or a determination and pronouncement by any individual of recognized international standing and integrity, or a pronouncement through a process of arbitration, or a pronouncement through judicial determination, if there is a pronouncement that in respect of the obligations undertaken by Pakistan, Pakistan is in default with regard to any matter, I have the authority of my Government to state that, in the speediest possble manner and within the shortest possible time, Pakistan will rectify that default, so that the matter shall be de-

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cided in accordance with the wishes of the people. I shall come to these matters one by one later, at least to the principal ones, and if others are cited I shall deal with them also and I shall be able to show, as I have said, what the situation is.

But you cannot have a position in any matter like this - and you have to look at the geography of the place to know what is the danger that threatens not only that area but every one of us here - which just covers it over as if it does not exist, and then say to both sides, "You'd better be content with what has happened". As I said, I shall come to that later ; I shall now proceed with the story.

The Security Council, having taken that view, eventually adopted a resolution at its 286th meeting, on 21 April 1948. I say "eventually" because first another text, in accordance with the principles enunciated by the members representing the various countries on the Security Council, was presented. After the six sponsors had spoken in support of it, the Indian delegation intimated to the Security Council that it had been asked to return home for consultation and that it would come back after those consultations to continue to participate in the discussions of the Council. So that for a period the discussions were interrupted. It is therefore not of much relevance to hark back to that draft resoultion. But that draft resolution complied with every one of the conditions that had been adumbrated in the statements of the members. Later on a text considerably wanted down presented and was adopted. That is the resolution which is now the subject matter of implementation.

According, so far as the Security Council is council is concerned, on 21 April 1948 it provided for the setting up of a Commission comprising five members. Two were to be nominated by the States concerned, one by Pakistan and one by India ; two were to be nominated by the Security Council : and one was to be nominated by the last two members nominated by the Security Council. So eventually the Commission was set up. India nominated Czechoslovakia, Pakistan nominated Colombia and Belgium, and Colombia and Belgium agreed

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upon the United Stated. That is how the Commission was composed.

The matter was then put into the hands of the Commission, which went first to Geneva to take preliminary measures and study the whole fairly complicated question,the resolution and the debate of the Security Council and everyting else. Eventually, on 7 Jully 1948, the Commission arrived in Karachi. I believe they had an interview the Prime Minister of Pakistan on 8 July, and during their very first call on me I explained to them the change that had taken place in the situation. Since the Security Council would not countenance or encourage the Government of India in its desire to reach a military decision rather than one in accordance with the resolution that had been passed here, the Government of India, after the matter had been adjourned in the Security Council on 27 April 1948, had made preparations which where so complete that the report of the Pakistan Commander-in-Chief, General Gracey, was that an Indian Army offensive was imminent, threatening danger to Pakistan's system of irrigation and security. I will not weary the Council with the details, it is long ago, but it was absolutely necessary that Pakistan regular troops should be sent in to hold the line. They were sent in during the first week of May.

As soon as the Commission arrived in Karachi they were apprised of this situation. They have described that and have admitted that it was a serious change, or a new element, in the situation as compared with what had been contemplated by the Security Council. Indeed, after considering whether they should ask the Security Council for fresh directives or attempt to deal with the matter themselves, they decided to deal with it themselves. They travelled back and forth between Delhi and Karachi and produced a draft resolution which subsequently became known as the resolution of 13 August 1948. The Government of India signified its acceptance of this resolution, although with some clarifications and provisos. But the Government of Pakistan was not able to accept it because it stopped

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half way to a plebiscite. I did not make any provision for the conditions of the plebiscite but only applied to demilitarization.

The Commission continued its activities and eventually produced a second resolution, which is technically dated 5 January 1949, but it was communicated the Governments late in December 1948. The Council was then sitting in Paris because the General Assembly's third session was taking place there and the Commission found it covenient to carry on its discussions with the representatives of the two Governments in Paries instead of having to travel each time to one capital or the other. Towards the end of December both Governments signified their acceptance of both the 18 August 1948 and the 5 January 1949 resolutions, and in consequence of the acceptance of those two resolutions dealing with demilitarization as well as the holding of a plebiscite it was possible to bring about a cease fire on 1 January 1949.

Later on, in March 1949, the Commission arrived in Delhi and began to hold meeting designed to secure the implementation of the resolutions. The first task was the demilitarization of the State. Now although India made repeated public declarations here that it would be prepared to withdraw its armed forces and co-operate in the holding of a plebiscite under international auspices, it raised several questions. Again, I am not laying blame; various things were taken into account by the Security Council such as the question of accession, the question of sovereignty, the question of the so-called aggressions by Pakistan, the actual situation in the State all that, but the two resolutions were accepted by both sides and are binding on both sides. When the Commission arrived in Delhi and held a meeting in March, it called upon representatives of both Governments in order to settle the question of demilitarization, that is so say to get the armed forces of Pakistan in their entirety out of the "Azad" Kashmir area, or away from the "Azad" Kashmir side of the cease-fire line and, in accordance with the resolution, to get the Indian army out of the Indian-occupied portion.

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Each side was asked to propound a scheme, because obviously, as I shall show when I come to give you the reactions of India, it was a condition of any withdrawal that there should first be a truce scheme according to which the withdrawal of the troops would take place. Pakistan submitted one, but eventally when it sumitted a scheme to the Commission for the withdrawal of the bulk of its forces, it laid down a a condition that the Commission was not to disclose that scheme even to the Security Council and certainly not to Pakistan. Naturally any agreement with Pakistan in accordance with the terms of the resolution would have to be made public, but we do not know to this date what the Indian scheme was. However, the Commission, in its third repot, observed that in its view, although it was not at liberty to disclose what the scheme presented by India was, it did not conform either qualitatively or quantitatively with the requirements of the resolution. There ensued a long period of efforts by the Commission and then the Commission was replaced by the United Nations Representative for India and Pakistan, Sir Owen Dixon, and afterwards by Mr. Graham. These efforts were devoted to bringing about an agreement on a scheme for the withdrawal of troops from both sides. At that time—I want to say this here and now, although I shall have to refer to it again later—on no occasion was any question raised that the essential preliminary of the resolution had not been complied with and that therefore no occasion arose for the withdrawal of troops on either side. The essential preliminary was the cease-fire, and besides even the tribesmen had withdrawn as soon as the fighting had come to an end. Why should they have continued ? They went back to their homes ; those who had come in from Pakistan, apart from the regular forces, had already gone out. The only question remaining was the withdrawal of the regular troops. Scheme after scheme was presented, and I might say that, by and large, Pakistan was ready to go forward. India was not. I repeat, India did not base its rejections on the ground that Pakistan had not complied with what it had to do before withdrawal ; it was only that the schemes were not acceptable to it.

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In between, certain other things were tried. Again, I will not weary the Council by going into details. Sir Owen Dixon, after recording the finding, found that Prime Minister Jawaharlal Nehru was not willing to accept any conditions which, alone, would guarantee the freedom of the plebiscite. He had then to try to carry out his alternative directive from the Security Council—that is to say, to explore the possibility of some other method of resolving the dispute. He said he found himself obstructed all the time by India ; and that was the first time that the matter was seriously pressed on the insistence of the Prime Minister of India—that Pakistan must be declared to be an aggressor.

Sir Owen Dixon points out in his report that he had no authority to do that, that the Security Council, although asked several times, had refused to deal with that question. What it concentrated upon was a settlement of the dispute, rather than a pronouncement on the legal questions of aggression or non-aggression ; but he was prepared to assume, for the purpose of taking the matter further, that the entry of the tribesmen into the State, and of the armed forces of Pakistan in May 1948, was not in accordance with the principles of international law, or was contrary to the principles of international law. It was a hypothetical assumption that he was prepared to make in order that the matter be carried further. That has since then been construed as a finding, by the Security Council, that Pakistan is in aggression. We will come that later, also.

But at the time the objective was to remove all the obstructions and difficulties in the way of getting an agreement upon the scheme of withdrawal. As a matter of fact, right until the end of the efforts of Mr. Graham, the United Nations Representative—or rather, until the last effort he made—that was the principal question. Certain general principles were formulated and were accepted by both sides ; but on the proposals which related to the concrete matter there could be no agreement. I shall mention one or two matters.

By this time, it is quite clear, I hope, that, with regard to

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the main armies of both sides in Kashmir, the agreement in the resolution was that, when the scheme was agreed upon - and I shall show later that that is the agreement Pakistan should begin the withdrawal of its regular forces from the "Azad" Kashmir side, and when a certain number of days had elapsed after that withdrawal had been commenced, India would begin to withdraw the bulk of its forces. Thereafter, the process was to continues on both sides, in a synchronized fashion, so as not to give any advantage, or cause any fear, to either side until the whole of the Pakistan armed forces and the bulk of the Indian forces were withdrawn.

Now, one thing which has always given a great deal of trouble is this : what constitutes "bulk" ? "Bulk" is not a term of art ; but whatever it constitutes, it does not constitute a given position : it does mean the major portion. On one occasion, getting tired of this controversy with regard to what does or does not constitute bulk, I decided to take the plunge on behalf of my Government ; and from this table I made an offer, I said : "This controversy has lasted long enough. What constitutes bulk ? Bulk means the major portion. What the Indian Government says is the major portion, we do not know. The Commission says that what the Indian Government says is the major portion, which it is willing to withdraw, does not, qualitatively or quantitatively, conform to the resolution. Here is the quandary. How is it to be resolved ? The Indian Government says : "We are willing to withdraw "X", because that constitutes the bulk ; and we shall leave behind only "R". because that is the lesser part.' I say, 'All right, let them withdraw "Y" and leave "X" ; leave the bulk in, and withdraw the remainder and we will accept that as the withdrawal of the bulk'." That offer was not accepted.

Later on, on one occasion, the Indian representative—who happened to be my very esteemed friend for whom I have always had deep affection, Mrs. Pandit—presented a proposal here which I thought was a very constructive proposal, but which involved, also, a later stage of the withdrawal of forces,

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that is to say the stage pertaining to the disbanding and disarming of the "Azad" Kashmir forces. You cannot withdraw them: they belong to the people of the country; they have to remain there. With regard to them the Commission's resolution to 5 January 1949 provided that, when the Plebiscite Administrator takes over, he can take such action in respect of the remaining troops as he considers necessary, having regard to the security of the State and the freedom of troops would be the whole of their troops minus the bulk which was withdrawn, and the State forces; and, on the "Azad" Kashmir side, there would be the "Azad" Kashmir forces; the Pakistan troops would have gone, and he could then take such action as necessary. But it was the Indian position that the disbanding must be done as part of one process, at one stage. That proposal headed the field, and Mrs. Pandit put forth a solution which, I thought, offered some basis of an agreement, relating both to the regular forces of both sides, and, also to the "Azad" Kashmir forces.

I said again: "I make this offer: here and now, on behalf of my Government, I accept the proposals made by Mrs. Pandit, in so far as they relate to the regular forces, the whole of the Pakistan forces, going out, and the bulk of the Indian forces, which now had been defined—what they would take out from their side. With regard to the disbanding of the rest and the disposal of the rest on the other side, let the United Nations Plebiscite Administrator, as soon as he takes over, take charge; it is his province, not our province."

The very next day, in the newspapers, the comments of Prime Minister Nehru appeared to the effect that my proposal was fantastic. The thing did not go forward.

In his last report, made on 28 March 1958, Mr. Graham, after summing up that no progress was possible, made the suggestion that the two Prime Ministers meet under his auspices to consider certain questions. That was acceptable to Pakistan. It was rejected by India. That meeting too could not take place. That is where the matter rested at the end of March 1958—that is to say, just over four years ago.

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In the meantime, when the present regime came into power in Pakistan, the President of Pakistan—who was extremely anxious that whatever disputes there were between India and Pakistan should be speedily settle—requested a meeting with the Prime Minister of India. He was flying from Karachi to Dacca, Dacca being the capital of East Pakistan. He tried to ascertain in advance whether the Prime Minister would do him the honour of meeting him at the airport while he was on the way, in which case he would stop at the Indian airport; and he then invited the Prime Minister of India to come later to Karachi, in September of 1960. The Prime Minister came to Karachi; they had conversations, and again no settlement could be reached, nor could any agreement be reached which would move the question toward a settlement. Before leaving Pakistan, the Prime Minister of India suggested to the President that the President might visit him in Delhi, where they might continue their conversations. The President said he would be very happy to go to Delhi at any time, provided, when they met next time, they would not repeat the same exercises in which the Prime Minister of India would tell him why no progress could be made, but would concentrate on making progress, – in other words, provided the Prime Minister of India would either be prepared to tackle the whole question and try to come to a settlement, or be prepared at least to move the question toward settlement.

That is where the matter rested until my letter to the President of the Security Council in January requesting another meeting. Then the question of negotiations between the parties was revived.

But that position still holds. On the one side there have been suggestions: "Let us negotiate"; though there had been a public statement that their position is that they would like to see the parties accept the present position and talk only of adjustment. And on the other side, the position is: "There is no use in talking about adjustment in the present position. The present position is the consequence of the fighting that took place. It is a military position, and this is not a settlement of the

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question in dispute." However, we are quite willing at any time to enter into negotiations and to discuss matters, provided we discuss the resolving of the dispute, that is to say, the question of the accession of the State of Jammu and Kashmir to either Pakistan or India.

It seems that what has happened in this context is well known to the members of the Security Council. If the President and the members of the Council feel that it has been a sufficient strain for them for one afternoon to have had so much placed before them—namely the history of the dispute—I would request an adjournment until some time next week which may be convenient to the members of the Council, for I understand that, for one member, Monday may not be convenient, and for another member - as a matter of fact, the President for next month—Tuesday may not be convenient. As far as we are concerned, any day the Council may wish will be convenient. If Wednesday is convenient to the Council, it is convenient to us. I will then go, by way of illustration, into the questions raised as I know them and so far as I know them, and I will select the principal ones on the other side—why progress cannot be made or could not be made on the basis of the agreement subsisting between the parties. After I have dealt with those, I will suggest one or two or three methods, any of which might possibly help to move the matter towards a settlement.

I will again repeat here that the desire of my Government, as I have said, is not to make debating points, is not to apportion blame, is not to raise prejudice. Our effort is not what has been described in the Indian Press as agitational or propagandist. Whom would we want to agitate? What is the propaganda that we want to carry on, and how would it help the situation? The situation is getting extremely difficult. It has sometimes been so tense that one was not quite sure whether within the space of a week there might not be a resumption of the fighting. It is still a situation of the utmost gravity. It keeps apart two countries which are linked by their traditions, their common history and their common language. After all whatever language is spoken on one side by one community is also spoken

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by that community on the other side. As a matter of fact, the language of culture that we speak in West Pakistan is spoken much better by the Prime Minister of India than by any of us. Certainly he has a very much better command of it than I have. Indeed, when, as often happens here in this country—it happens almost every fortnight or so when I go to address some meeting or other; especially at the universities—I happen to meet some of my Sikh friends, who are now all domiciled in India, I can talk to them in a language which, unless an Indian comes from that part of the country, could not be understood by the rest of India. There are all these relations, and, in addition, we have to face common dangers, we have to resolve common problems. This problem of Kashmir is the main thing that is keeping us apart. If this could be put on the way towards a settlement—we know it will take some time to reach a settlement, for the question has been pending so long and there are so many things to consider—if it could be moved towards a settlement, even before the settlement could be reached, given the assurance that we were now likely to reach it in a fair and equitable manner, many other relationships between India and Pakistan would become closer and the two countries would begin to co-operate in many fields to the mutual advantage of everyone. That is our object.

I hope that as a result of the deliberations of the Security Council a settlement will ultimately be reached. I very much fear, however, in my own mind that this may be the last occasion when the Security Council may have that privilege. 'Again I hope that the Council will not feel it need be in a hurry, that it will not feel that it must come to a deadlock or that it must cover the situation somehow or other and then pretend that the matter has been settled. I hope rather that it will direct its wisdom and judgement and all the resources, intellectual and philosophical, that it commands in such abundance, to the intricacies of this problem and try to bring the parties together to face the realities of the situation and then try to come to a settlement.

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I hope that whatever time I have taken will be excused on the ground that it is justified by our extreme anxiety that all aspects of the problem should be properly realized. Any over-simplification, in this complicated matter, of any of the complex factors that enter into it will not facilitate or stimulate a solution but will bar progress towards that end.

183. *Text of the speech made by Mr. Zafrullah Khan (Pakistan) in the Security Council meeting No. 1008 held on 2 May 1962.*

With reference to what the President said concerning the change in the date and time of this meeting, certain impressions have been conveyed to me with regard to which I would beg the indulgence of the Council to make a brief statement.

I have been informed from three or four quarters that it is in the minds of some, including one member of the Council, that I deliberately refused to comply with a suggestion made by the representative of India that a meeting might be held earlier so as to meet the convenience of the Defence Minister of India In this connexion, it has been said that this request was conveyed to me on Saturday morning last and that I has purposely and deliberately stalled on it and refused to agree to an earlier meeting. This is not correct. No such request or suggestion was conveyed to me on Saturday at any time, noon or afternoon.

I came to know that the representative of India, Ambassador Jha, my friend, had made efforts to get in touch with me and had not been successful and that he had in mind making this suggestion to me. I got in touch with Mr. Jha on Monday morning shortly after I reached my office. He was not then in his office but his secretary, who spoke, said that the message would be conveyed to him and he would speak to me as soon as possible. Within a few minutes he very kindly rang me back and told me what was desired. I told him that I had had in mind at the beginning of our meeting last Friday that I would work on Saturday, Sunday and Monday up to mid-day

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on the remaining portion of my statement to the Security Council and that in case there was a meeting on Monday afternoon, I would then be ready to make that portion of my statement; but that when it had been decided at the end of the meeting that the next meeting would be called on Thursday morning, I had told my two colleagues who were working with me on my further statement to take it easy over the weekened, and I myself had also taken a day off, and we had agreed to start working on my statement on Monday afternoon that is to say, the afternoon of the day on which Mr. Jha and I were talking; that it was therefore extremely difficult for me to be ready to speak to the Council before Thursday morning, but I would see whether I could possibly do it any earlier.

Later the same morning, when Mr. Jha and I met in the Secretary-General's offices to pay our humble tribute to one of the great heroes of space, Major Titov, he renewed his request. On making every possible calculation, I told him that the earliest I could be ready would be this afternoon. I can assure the members of the Council that I worked up to the last moment today, until I had to come here, leaving it to my colleagues afterwards even to collect the papers and to bring them along so that I could start my statement. I could not possibly have been ready earlier.

I apologize to the Defence Minister of India if any inconvenience has been occasioned to him, but I also want to assure him that I could not, in the circumstances having regard to the earlier decision of the Council that the meeting would be on Thursday morning, have been ready any earlier.

This afternoon, as I have already conveyed to the President, I had hoped that if the Council could be called to order punctually at 4 o'clock—though I am making no grievance on that point at all, I have no business to - I could continue until, say, two hours after five o'clock, and if there was a break of a few minutes, I would finish my statement, say, around 7 o'clock —perhaps a little later, perhaps a little earlier. We are starting nearly half an hour late, but nevertheless my

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intention is that I should conclude this evening, though it may be later than 7 o'clock. So that the net result should be the same as if the Council had held the first meeting this morning and the second meeting this afternoon, a suggestion which was rather emphatically made to me by the representative of India and to which I, with great regret, could not agree.

I shall now proceed to resume the statement which I was in the course of making at the previous meeting when I stopped because I had not my further papers in order at that time.

The main thesis on which I was engaged during the greater part of last Friday afternoon was that Pakistan and India had undertaken the obligation that the question of the accession of the State of Jammu and Kashmir to India or to Pakistan would be settled only through a free and impartial plebiscite. I had said that in this connexion various expressions had been used, all of them quite clear and leaving no doubt that that was the understanding. They were used unilaterally by India at a certain stage. Then they were used as a part of the obligation entered by the two parties. It was stated that it was the consistent policy of the Government of India that where the question of accession was in dispute between the ruler and his people it should be decided by reference to the freely expressed wishes of the people. In pursuance of that consistent policy, it was stated in Lord Mountbatten's letter to the Maharajah, which I quoted at the previous meeting, that it was the wish of the Government of India that this question should be so settled that when law and order were restored the free expression of the wishes of the people should be ascertained. The word "wish" was used as expressing a wish on behalf of the Government of India, which was going to furnish aid to the Maharajah in his extremity, that he would have to co-operate in this matter because it was the consistent policy of the Government of India. Later, the expression "a promise to the Government of Pakistan" was used. It was said that this "is not merely a promise to the Government of Pakistan", it is a promise "to the people of Kashmir and to the world". The word "assurance"

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has been used. The word "pledge" has been used. It was stated before the Security Council that on that "condition"—that is to say, that the question would be settled through a free and impartial plebiscite—and on "that condition alone" the Maharajah's offer of accession was accepted. Later the expression "stipulation" was used—that we made the stipulation that it would have to be decided through a plebiscite.

I will this afternoon; just to conclude that portion of my submission, draw the attention of the Council to two more declarations in that respect. The first is that of the revered Prime Minister of India again, who said:

> "Kashmir is not the property of either India or Pakistan. It belongs to the Kashmir people. When Kashmir acceded to India, we made it clear to the leaders of the Kashmir people that we would ultimately abide by the verdict of their plebiscite. If they tell us to walk out, I would have no hesitation in quitting Kashmir.
>
> "We have taken the issue to the United Nations and given our word of honour for a peaceful solution. As a great nation, we cannot go back on it. We have left the question for final solution to the people of Kashmir and we are determined to abide by their decision."

That quotation is taken from the *Amrita Bazar Patrika*, of Calcutta, dated 2 January 1952.

Then before the Security Council, on 7 February 1950, Sir Benegal N. Rau, speaking on behalf of India, said, in referring to the admission of representatives of Kashmir to the Indian Constituent Assembly:

> "It is therefore clear that the admission of representative from any particular State into the Indian Constituent Assembly did not necessarily imply accession. As I have said, Kashmir had this right to representation ever since

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April 1947;" – long before independence—"it acceded, tentatively, in October 1947, so that the accession came after the grant of the right and not the other way round." [463rd meeting, p. 20.]

Sir Benegal N. Rau was a great lawyer. He had been a judge of the Calcutta High Court and, what is more, he was a great authority on constitutional law, and his interpretation, speaking before the Security Council as the representative of India, was that Kashmir had acceded tentatively in October 1947.

Towards the close of my submissions on Friday I indicated that, at the next meeting of the Security Council, I would go on to comment on certain questions which had been raised either as presenting an objection to proceeding with the implementation of the resolutions of the United Nations Commission for India and Pakistan, or in order to show that the plebiscite was no longer necessary.

Out of these questions three connected matters of accession, sovereignty and aggression have often been put before the Security Council, and in public declarations. It is sought to draw certain conclusions against progress being made with regard to the implementation of the two resolutions of the Commission which both parties accepted. In brief the argument is: The State acceded through the Maharajah to India. Therefore, the territory of the whole State became a portion of Indian territory. India has sovereignty in respect of the whole State of Kashmir. Consequently, the presence of Pakistani troop, and earlier perhaps also the tribesmen – I mean, this might be the argument – constitutes aggression by Pakistan against India, and as long as that aggression is not vacated there can be no progress towards a plebiscite.

I have two main lines of argument in reply. The first is that an examination of the situation would show, as I submitted Friday afternoon, that though the accession estimated a *de facto* position, no doubt, the accession is the very question in dispute

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and, therefore, it cannot be accepted—and certainly Pakistan does not accept it—as an accomplished legal fact or an accomplished legal reality. Consequently, the theory of sovereignty and the allegations with regard to aggression are matters in dispute; they cannot lead to legal consequences binding upon the parties.

My second line of argument will be that, whatever may be the merit of that part of the controversy—on one side, the claim; on the other side, the denial of it—it was after the so-called aggression, wheather it related to the situation created by the incursion of the tribesmen in October 1947, whether it was the entry of the regular forces of Pakistan into "Azad" Kashmir in the first week of May 1948, whatever may be the situation with regard to that, it was long after these two dates that the Commission's relolutions of 13 August 1948 and 5 January 1949 were accepted by the two Governments. These matters were not decided by the Commission—it could not decide them: It had no authority to decide them—the decision had to be made through the plebiscite. But the Commission took into account India's allegations or arguments or representations on all these questions. These certainly influenced the framework of the two resolutions which the Commission presented to the parties for acceptance and which the parties eventually accepted.

Therefore, these questions are no more than academic questions. They do not affect, in any manner whatsoever, the binding nature of the two resolutions which were accepted by both sides in the presence of the events which had already taken place. The resolutions constitute an international obligation, binding upon both, which it is their duty to implement according to its language, its meaning and its spirit.

With regard to accession, as I shall presently show or at least remind the Council, India's own stand is—and it is not just a theoretical declaration, it was a deliberate statement made before the Security Council at its 264th meeting on 8

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March 1948 - that where there is no dispute between the ruler and the ruled, the ruler can go ahead and offer accession, on the basis of the agreement between his subjects and himself regarding which of the then two Dominions the State should accede to; however, that when there is a dispute - as undoubtedly there was in this case—the wishes of the people are to be ascertained and it is only in accordance with the wishes of the people that accession can taken place.

I shall quote Mr. Gopalaswami Ayyangar in the Security Council on 8 March 1948 :

> "No doubt the Ruler, as the head of State, has to take action in respect of accession. When he and his people are in agreement as to the Dominion to which they should accede, he applies for accession to that Dominion. However, when he takes one view and his people take another view, the wishes of the people have to be ascertained. When so ascertained, the Ruler has to take action in accordance with the verdict of the people. That is our position." [264th meeting, p. 50.]

Well, according to that position, the accession has not yet taken place. Because, "when so ascertained"—and it has not yet been uscertained—"the Ruler has to take action in accordance with the verdict of the people." There has as yet been no compliance with that procedure.

The Security Council already has a picture of the circumstances at the time when the form regarding accession was filled in and when the letter accompanying it was written to Lord Mountbatten. There had been an armed revolt against the Maharajah and his authority. I would very respectfully submit that the Maharajah had already forfeited the allegiance of his subjects, by putting himself at the head of his forces for the project of exterminating or seriously reducing the number of those who were likely to question his authority to accede at his own will. I cited a statement from *The Times* of London, I believe of 10 October 1947, that the Maharajah had put him-

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self at the head of his own forces for this extermination project and 237,000 of his subjects had already been killed. As a reaction to the Maharajah's designs against his own subjects, and in sheer desperation, an armed revolt had started and had begun to spread and the Maharajah's forces had had to retreat from parts of the area concerned. This was before the tribal incursion took place.

I should like to draw the attention of the Council to a Press note issued by the Maharajah's Government as early as 12 September 1947 which said :

> "On 24 August 1947 large and highly excited mobs collected in the west of Bagh tehsil and on 25 August disregarding all efforts to persuade them to disperse, marched on to Bagh town in the vicinity where they reached the number of some 5,000 which swelled considerably during the next two days. These mobs were armed with fire-arms of various patterns, axes, spears and other weapons."

So that, already in September, this revolt against the Maharajah's authority had started.

I wish to remind the Council of the statement Sheikh Abdullah made at Delhi on 21 October 1947—also before the tribal incursion—during the course of which he said that present trouble in Poonch was caused by the unwise policy adopted by the State. The people of Poonch, who suffered under their local ruler, had started a people's movement for redress of their grievances. It was not communal. Kashmir sent its troops and there was panic in Poonch. But most of the adult population of Poonch, he explained, were ex-serviceman in the Indian Army with close connexions with the people in Jhelum and Rawalpindi, that is to say, the neighbouring districts of West Pakistan. They evacuated their woman and children, took them from the State into Pakistan, crossed the frontier and returned with arms supplied to them by willing people,

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The position then was that the Kashmir State forces were forced to withdraw in certain areas.

The result was that the situation at that stage—before the tribal incursion into the State—was that the Maharajah's people had risen against him, his forces had had to retreat from certain parts of the State, and, after the tribal incursion, the Maharajah had to leave the capital and arrived at Jammu.

The Maharajah left Srinagar, the capital, on 25 October. Then, on 26 October, while he was at Jammu, Mr. V. P. Menon, the then Political Secretary of the Government of India who was in charge of these affairs, brought him the assurance from Delhi that India would come to his rescue—these are the words—provided he would sign the form for accession, which the Maharajah did.

The Maharajah's accompanying letter of 26th October contains a very interesting statement. He said in that letter, which, of course, was addressed to Lord Mountbatten, Governor-General of India :

> "I have to inform Your Excellency that a grave emergency has arisen in my State and request the immediate assistance of your Government. As Your Excellency is aware, the State of Jammu and Kashmir has not acceded to either the Dominion of India or Pakistan. Geographically, my State is contiguous with both of them Besides, my State has a common boundary with the Union of Soviet Socialist Republics and with China. In their external relations, the Dominions of India and Pakistan cannot ignore this fact ..
>
> "With the conditions obtaining at present in my State and the great emergency of the situation as it exists, I have no option but to ask for help from the Indian Dominion. Naturally they cannot send the help asked for by me without my State acceding to the Dominion of India. I have accordingly decided to do so, and I

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attach the instrument of accession for acceptance by your Government. The other alternative is to leave my State and the people to freebooters. On this basis no civilized Government can exist or be maintained. This alternative I will never allow to happen so long as I am the ruler of the State and I have life to defend my country.

"I may also inform Your Excellency's Government that it is my intention at once to set up an interim government and to ask Sheikh Abdullah to carry the responsibilites in this emergency with my Prime Minister.

"If my State is to be saved, immediate assistance must be available at Srinagar. Mr. V.P. Menon is fully aware of the gravity of the situation and will explain it to you, if futher explanation is needed."

Here there is no mention of the condition of ascertaining the wishes of the people and, in accordance with the wishes of the people so ascertained, the Maharajah having full authority then to proceed with the accession. Here it is an appeal, *ad misericordiam* almost, to the Government of India to come and save his rule over the State. By that time this rule had practically been repudiated altogether, as appears very clearly from Mr. Menon's account, to which I drew the attention of the Security Council at the previous meeting. The account said that, before going to sleep in Jammu after his all-night journey across the two high mountain passes from Srinagar, the Maharajah had given directions to this effect: "If Mr. Menon comes back, then you need not wake me up, because I can sleep in peace, and help will be coming from India; but, if Mr. Menon does not come back, shoot me, because all is lost."

This accession was not offered in accordance with the principle that the Gouernment of India's representative himself presented to the Security Council: that the ruler can go ahead with accession when there is agreement between him and his subjects, but not when there is a dispute. Here there was not a dispute, but the Maharajah's authority had been altogether

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repudiated. This was the end, so far as the Maharajah was concerned. All was lost for him. He was not acting in accordance with the wishes of the people. The wishes of the people were turned about, and he said to the Government of India; "If you can send any help, send it immediately, because it is the only way that the State can be saved" – meaning that it was the only way in which his own authority could be saved. Does this comply with the idea of accession as placed before the Security Council by the Government of India ?

There was a good deal of correspondence between the Government of India and the Government of Pakistan, and all those assurances, those promises, those pledges were given to Pakistan. Their purpose was that India had not sent its military forces into the State for the purpose of in any way the decision of the people of the State with regard to accession, but had sent them to meet the emergency that had arisen, and that once law and order was restored and the territory of the State was cleared of the raiders, the Indian Army would be withdrawn and the people of the State would decide the question of accession through their freely expressed wishes. Further than that, the two parties have since agreed that this is the method through which this question will be resolved. They have accepted the principle that the question of the accession of the State of Jammu and Kashmir to India or Pakistan will be decided through the democratic method of a free and impartial plebiscite.

The resolution of the Security Council dated 21 April 1948 stated this :

"*The Security Council,*

"...

"*Noting* with satisfaction that both India and Pakistan desire that the question of the accession of Jammu and Kashmir to India or Pakistan should be decided through

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the democratic method of a free and impartial plebiscite, "...

"*Instructs* the Commission to proceed at once to the India subcontinent and there place its good offices and mediation at the disposal of the Governments of India and Pakistan with a view to facilitating the taking of the necessary measures, both with respect to the restoration of peace and order and to the holding] of a plebiscite, by the two Governments"—I stress that : the holding of a plebiscite by the two Governments – "acting in co-operation with one another and with the Commission, and further instructs the Commission to keep the Council informed of the action taken under the resolution..."

This was the decision of the Security Council, in pursuance of which the United Nations Commission for India and Pakistan was appointed, and the Commission went over later—in July—to perform this task.

Then the resolution of the Commission itself 13 August 1948, part III, which both Governments accepted, states :

"The Government of India and the Government of Pakistan reaffirm their wish that the future status of the State of Jammu and Kashmir shall be determined in accordance with the will of the people and to that end, upon acceptance of the truce agreement"—which the earlier portion of the resolution had provided for—"both Governments agree to enter into consultations with the Commission to determine fair and equitable conditions whereby such free expression will be assured."

Then there is the resolution of 5 January 1948 of the United Nations Commission for India and Pakistan, which adopted later because the resolution of 13 August 1948 had stopped with the portion that I read out and Pakistan wanted the conditions of the plebiscite also to be spelled out. The

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beginning of the Commission's resolution of 5 January 1949 reads :

> "*The United Nations Commission for India and Pakistan*",
> "*Having received* from the Governments of India and Pakistan, in communications dated 23 December and 25 December 1948, respectively, their acceptance of the following principles which are supplementary to the Commission's resolution of 13 August 1948 :
>
> "1. The question of the accession of the State of Jammu and Kashmir to India or Pakistan will be decided through the democratic method of a free and impartial plebiscite".

That was the agreement : "The question of the accession of the State of Jammu and Kashmir to India or Pakistan will be decided through the democratic method of a free and impartial plebiscite." It has not yet been decided. It has to be decided, and it will be decided in accordance with the freely expressed wishes of the people. It has been said : But the word used here is "will" be decided, which indicates simple futurity. All right, it indicates simple futurity. That still means it has not yet been decided. It has to be decided simply in the future. I suppos the suggestion is that simple futurity means that there was no binding obligation undertaken. But I submit that the language is quite clear, that a binding obligation was being undertaken. In any case, if "will" and "shall" make so much difference in these documents, part III of tue Commission resolution of 13 August 1948, which I have already recited, have already recited, had provided that : "The Government of India and the Government of Pakistan reaffirm their wish that the future status of the State of Jammu and Kashmir shall be determined in accordance with the will of the people and to that end....."

But I would submit very respectfully that the Commission was not even conscious of the fact that the "will" and "shall" in one context or the other would make any difference or would lead to different interpretations. It was setting down its

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meaning that this was the method of deciding the dispute between the parties In the resolution of 13 August 1948, the Commission used the expression "shall" be decided. When it had obtained the agreement of the parties to both the resolutions, on 5 January 1949, it used the expression "will" be decided, it has still to be decided.

That was the situation with regard to the resolution. I might submit to the Security Council that several resolutions of the Council itself, which I need not read out, have laid down the same principle. There is the resolution of 12 December 1957, which is the latest of them. The have repeatedly laid down that the question of the accession of the State of Jammu and Kashmir to India or to Pakistan will be decided through the democratic method of a free and impartial plebiscite. And that stands to reason.

That is the whole essence of the disputes to whom shall the State accede ? That question shall be decided through the freely ascertained wishes of the people. Therefore, that question has not been decided. It has not been decided obviously because that question is in dispute. Consequently, it cannot lead to any legal consequences except to the extent to which the de facto situation makes it compulsory.

Now we shall deal with the question of aggression. The question of aggression was raised in the very first letter of the Government of India addressed to the Security Council. How did the Security Council deal with the question of aggression ? It was raised, it was argued and it was repeatedly urged, and as a matter of fact towards the end of first round of discussions in the Security Council it became the insistance of India that the security Council should only concern itself to get the territory of the State vacated by whosoever had entered from the outside for the purpose of fighting there, and that the resolution of the problem, the ascertaining of the freely expressed wishes of the people and so on, would be carried out by the Govern-

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ment of India. The Security Council firmly and consistently refused to accept that position.

The statement of Mr. Warren Austin on 10 February 1948 in the Security Council will make that clear quite clear. He said that :

> "...Sheikh Abdullah made a statement that indicated that what he desired—and this was ratified by the representative of India immediately afterwards - as a trend in the Security Council towards the termination of hostilies, was that the Security Council should take up a position which would amount to that of an ally in a war, and should pull off Pakistan and allow India to finish the job by force against tribesmen. That is the very last position which the Security Council ought to take."

Then he went on a little later to say the following :

> " ..No party coming here to discuss a case like this can expect trends in the Security Council towards the application of force, or towards a solution which would ally the United Nation with one side so that it could be successful in a millitary attack or defence.

A little later on he said :

> "...I think that there is no confusion at all about the fact that the trend of our opinion, which is not yet in the form of a resolution, is towards a pacific settlement of this matter--an arrangement with terms of such character that they command the respect and the confidence of the parties to the dispute. As I have said, there seems to be no other way of bringing peace to that part of the world than this specific method of agreement between the parties, which involves such management and such control of the plebiscite—to which both parties have assented—as to ensure that everyone interested will know that it is free, fair and just."

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A little further on he said :

> "I hope that when the Indian delegation returns to its country it will make very plain the fact that the United Nations is not engaged in promoting war, and that the Security Council – namely, trying to find a pacific solution of this problem." [243rd meeting, pp. 75 and 76.]

Then, the next day, on 11 February 1948, Mr. Arce, the representative of Argentina said the following :

> "the cause of the present war is the rebellion of the Kashmir people against their Ruler, and the only remedy is to look to the will of these people :...it is absolutely nesssary to settle the matter of the plebiscite, first of all, as the only way to stop war." [246th meeting, p. 118.]

The fact of the matter is that there was insistence on the part of India throughout the Security Council discussions, as there has been since, on the so-called aggression. The Security Council refused firmly to be drawn into any discussion of it. They said the plain fact is that these people have risen against the authority of their ruler on the question of accession and the only way to deal with the situation is to assure them, and subsequently to carry out that assurance, that what they desire to obtain by force can be obtained through peaceful methods, and their will ultimately will prevail. This matter of aggression was rigorously pursued by India before the Commission. The Commission certainly, as it was bound to do, took note of India's submission on the various points before formulating the terms of it resolution of 13 August 1948 ; its first interim report makes that quite clear :

> "When the Commision was officially apprised of an element in the situation which had not been explicitly stated in its original terms of reference"—that is to say, in the meantime, in the first week of May 1948, regular Pakistani forces had entered the "Azad" Kashmir area—

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"it was forced to choose between two alternatives : either two alternatives : either to inform the Security Council of this material change, requesting new instructions, or to proceed to exert its mediatory influence in search of ways and means to correct those conditions. The Commission, after thorough consideration of the implications involved in referring the case back to the Security Council, decided to use its good offices to endeavour to obtain the cessation of hostilities and to create a peaceful and friendly atmosphere deemed essential for a final settlement.

"The Commission as can be appreciated from the historical account of its proceedings, inquired extensively into the possibilities of instituting a cease-fire. It ascertained that the Government of Pakistan would be willing to accept a simple cease-fire. The Government of India, however, clearly indicated that it could not entertain any proposal which would permit the Pakistan forces to remain within the territory of the State of Jammu and Kashmir. Finding that there was no common ground for obtaining agreement to an unconditional or simple cease-fire, the Commission drew up proposals which were calculated to satisfy both Governments.

'In order to link the cease-fire to the preparation for a final settlement, which was the desire of Pakistan, and yet provide for the withdrawal of Pakistan forces and tribesmen, as India requested, the Commission proposed, as part II of its resolution of 13 August, a truce agreement based on principles which it deemed fair and equitable, the details of which were to be worked out immediately following the cease-fire order.

"These principles were :"

I repeat again, these were the principles on which a truce agreement and truce scheme were to be based.

"(*a*) Withdrawal of the Pakistan forces from the State of Jammu and Kashmir ;

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"(*b*) Withdrawal of tribesmen and other Pakistan nationals not normally resident in Jammu and Kashmir, and who had entered the State for the purpose of fighting.

The above provisions were designed to satisfy India's demands.

"Other principles were :

"(*c*) Temporary administration by local authorities ("Azad" Kashmir) of territory evacuated by Pakistan troops ;

"(*d*) Withdrawal of the bulk of the Indian forces from Jammu and Kashmir ;

"(*e*) Temporary retention of such minimum of the Indian forces as might be required for the maintenance of law and order ;

"(*f*) Official assurances as to safeguarding of people, law and order, as well as all human and political rights.

"These proposals were thought by the Commission to satisfy Pakistan's demands.

"Finally, to complete its proposals, the Commission requested the two contending Governments to reaffirm their previously expressed desire that the people of Kashmir be permitted to determine their future political status, a principle which had been accepted by both India and Pakistan.

"In general, the Commission considered thal the principles of the truce agreement constituted a balance which could not but meet with the approval of both India and Pakistan, and which, upon acceptance and implementation, would promptly clear the way for both Governments to enter into active collaboratian with the Commission in the study of terms for a fair and equitable plebiscite".

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This is again the crux of the matter. When the Commission went out, it found that there was this situation – not only the situation which existed at the time when the Commission was set up but the further situation that Pakistan regular forces were now on the "Azad" Kashmir side also. India insisted upon one point of view, Pakistan upon another. The Commission exerted itself and finally drafted these principles, that is to say, that a truce agreement would be drawn up which would provide that, from the one side, the tribesmen as well as the regular forces would be withdrawn, along with any Pakistan nationals who might have entered for the purpose of fighting; and, from the other side, the bulk of the Indian forces would be withdrawn. That is how it appeared later in the resolution itself. There were other provisions to satisfy Pakistan that thereafter the Governments would agree upon the terms lending to a plebiscite. Therefore, all these questions—the question of accession, the sovereignty of the State, the so-called aggression —all were taken into account before the proposals contained in the resolution of 13 August 1948 were formulated and presented to both Governments. The Commission had, I think, already decided that they were not concerned with the juridical questions whether the accession was valid or not, whether aggression had been committed or not, or what the sovereignty was; they were to take note of the position as it existed and then make proposals which would enble the two Governments to co-operate towards the holding of a plebiscite.

The following statements appear in a summary of the meeting of representatives of the Government of India with the members of the Commission :

> "……the Prime Minister proceeded to comment on various other proposals under part II, feeling that the Commission might like to have the Government of India's views thereon. The formulation of paragraph I under section A, he said, constituted 'rather a feeble and complicated way of saying something very simple'."

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The Commission had said that a material change in the situation had taken place as a result of the entry of Pakistan, and the Prime Minister asked why it did not say that they had committed aggression. He said that the Commission's formulation was a rather feeble and complicated way of saying something very simple. I continue to quote.

> "On that same point, Mr. Ayyangar said that the Government of India readily accepted the principle that Pakistan troops should be withdrawn, but that it was not in accord with the reasons given in support of that principle :
>
> "Mr. Korbel pointed out that the Prime Minister himself had said that the Government of India was not concerned with humilitating Pakistan but wished to effect the withdrawal of Pakistan troops. Paragraph I under section he said, secured that result. The Commission, he said, did not wish to concern itself with the juridicul questions involved but on that point had followed the line adopted in the Security Council resolution of 21 April."

The Commission, therefore, without pronouncing itself on these matters, tried to bring about a situation where whatever was complained of from both sides would be eliminated, so far at least as the freedom of the plebiscite was concerned, so that a free plebiscite could be held. From that moment, when the two Governments accepted those principles as embodied in the resolution of 13 August 1948 and the resolution of 5 January 1949, those questions became academic. They had been taken care of, and the resulting agreement was binding on the two Governments. From then onwards, therefore, the sole question was the implementation of the resolutions. The implementation might raise questions of interpretation. One side might say that this means X and the other that it means Y. Nevertheless, the question was of implementation first, correct interpretation, then implementation. No further question of aggression, or soverignty or validity of the accession could arise.

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The letter of the Prime Minister of India of 20 August 1948 accepting the resolution of 13 August 1948 makes that very clear. The second paragraph of the letter says :

> "During the several conferences that we had with the Commission when it first came to Delhi, we placed before it what we considered the basic fact of the situation which had led to the conflict in Kashmir. This fact was the unwarranted aggression, at first indirect and subsequently direct, of the Pakistan Government on Indian Dominion tertitory in Kashmir ..."

The conflict actually was between the people and the Maharajah and so on, but I will not go into that. So, after having pointed out and certain other facts, the Prime Minister goes on :

> "Since our meeting of 18 August"—that was for the purpse of discussing with the Commission the implications of the various paragraphs of the resolution, the clarifications, the assurances, and so on—"we have given the Commission's resolution our most earnest thought. There are many parts of it which we should have preferred to be otherwise and more in keeping with the fundamental facts of the situation, especially the flagrant aggression of the Pakistan Government on Indian Union torritory. We recognize, however, that, if a successful effort is to be made to create satisfactory conditions for a solution of the Kashmir problem without further bloodshed, we should concentrate on certain essentials only at present and seek safeguards in regard to them. It was in this spirit that I placed the following considerations ..."

And then he set forth what considerations he had placed before the Commission. And family, the letter concludes :

> "In view of this clarification, my Government, animated by a sincere desire to promote the cause of peace and thus to uphold the principles and the prestige of the United Nations, have decided to accept the resolution."

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The resolution, the Prime Minister said, in some respects was found by them to be unsatisfactory; they would have wished certain things to be expressed differently, certain other things to have been included, and the Commission should have pronounced itself on certain matters, and so on. But after having considered everything and after having made their point of view with regard to the resolution clear, they finally accepted it; they accepted it in view of everything – the flagrant aggression, according to them, and so on.

On 16 December 1952, I made a statement before the Security Council which summed up the situation as I would desire to sum it up now on this matter, and that will do it perhaps more briefly than I could—this afternoon. I shall therefore quote it, with the permission of the Council; I said:

> "The question is today really academic. This question of the validity of the accession, of the alleged aggressions by one side or the other—these matters have long been left behind."

I might say that the case was not so one-sided even in being pressed before the Security Council. The Pakistan Government had repudiated the validity of the occession, had never admitted its validity, had not accepted the sovereignity of India over Kashmir, had charged India with aggression against Pakistan and in Kashmir. All these questions were being argued by both sides. I continue to quote:

> "The Crux of the matter, as the representative of India put it the other day, is the implementation of the two resolutions which constitute the agreement between the two Governments on this matter. Since those resolutions were accepted by the two Governments during the last week of December 1948, long after all these matters had happened and had been debated and had been clarified between the Commission and the two Governments, these questions, as I have said, have long been academic. The events in Kashmir in August, September, October, Novem-

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ber and December of 1947, the action taken by the Government of Pakistan on 8 May 1948—these all happened long before these two resolutions were even propounded by the Commission, let alone before they were accepted by the two parties. I would therefore beg the Security Council to remember that, although they are repeatedly raised, they have really now become a form of abuse in which the Government of India chooses to indulge against the Government of Pakistan.

"Normally, it would be most unjustifiable on my part to to take so much of the time of the Security Council to go over the same ground again. But the representative of India has solemnly adjured the Security Council to decide this question of accession if it wants this matter to be deal with rightly. I submit that, at the time when the Government of India agreed to the resolutions, all these events have occurred, had been debated, had been mentioned to the Commission, had been considered by the Commission, had been taken into account by it ; clarifications had been brought from the Commission on various aspects of its resolutions touching upon those matters, and the result had been an agreement which is embodied in these two resolutions." [609th meeting, paras, 67 and 68.]

You cannot today go behind them.

Now, under those resolutions what are the obligations the parties ? That is the agreement which holds the of field, as has been repeatedly said by my friends on the other side also. The resolution of 13 August 1948 provides as follows :

"*The United Nations Commission for India and Pakistan,*

"*Having given* careful consideration to the points of view expressed by the representatives of India and Pakistan regarding the situation in the State of Jammu and Kashmir, and"—it included all these questions—

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"*Being of the opinion* that the prompt cessation of hostilities and the correction of conditions the continuance of which is likely to endanger international peace and security are essential to implementation of its endeavours to assist the Governments of India and Pakistan in effecting a final settlement of the situation,

Resolves to submit simultaneously to the Governments of India and Pakistan the following proposal :

"*Part I*

"*Cease-fire order*

"A. The Governments of India and Pakistan agree that their respective High Commands will issue separately and simultaneously a cease-fire order to apply to all forces under their control in the State of Jammu and Kashmir as of the earliest practicable date or dates to be mutually agreed upon within four days after these proposals have been accepted by both Governments.

"B. The High Commands of the Indian and Pakistan forces agree to refrain from taking any measures that might augment the military potential of the forces under their control in the State of Jammu and Kashmir.

"(For the purpose of these proposals 'forces under their control' shall be considered to include all forces, organized, fighting or participating in hostilities on their respectives side.)

"C. The Commanders-in-Chief of the forces of India and Pakistan shall promptly confer regarding any necessary local changes in present dispositions which may facilitate the cease-fire.

"D In its discretion and as the Commission may find practicable, the Commission will appoint military observers who, under the authority of the Commission and

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with the co-operation of both Commands, will supervise the observance of the cease-fire order.

"E, The Government of India and the Government of Pakistan agree to appeal to their respective people to assist in creating and maintaining an atmosphere favourable to the promotion of further negotiations."

Subject to some comments that I shall have to make later to the Council on two of these aspects, because they have been raised repeatedly by the representatives of India, the rest of it has already been complied with, and therefore, with the exception of those two matters, we are no longer concerned with them. I now continue to quote:

"*Part II*

"*Truce agreement*

"Simultaneously with the acceptance of the proposal for the immediate cessation of hostilities as outlined in part I, both Governments accept the following principles as a basis of the formulation of a truce agreement, the details of which shall be worked out in discussion between their representatives and the Commission.

"A

"1. As the presence of troops of Pakistan in the territory of the Stete of Jammu and Kashmir constitutes a material change in the situation since it was represented by the Government of Pakistan before the Security Council, the Government of Pakistan agrees to withdraw its troops from the State."

This is the paragraph on which the comment of the Prime Minister of India was that it says in too many words what could have been said very simply. Now continuing:

"2. The Government of Pakistan will use its best endeav-

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our to secure the withdrawal from the State of Jammu and Kashmir of tribesmen and Pakistan nationals not normally resident therein who have entered the State for the purpose of fighting.

"3. Pending a final solution, the territory evacuated by the Pakistan troops will be administered by the local authorities under the surveillance of the Commission.

"B

"1. When the Commission shall have notified the Government of India that the tribesmen and Pakistan nationals referred to in Part II, A, 2 hereof have withdrawn, thereby terminating the situation which was represented by the Government of India to the Security Council as having occasioned the presence of Indian forces in the State of Jammu and Kashmir, and further, that Pakistan forces are being withdrawn from the State of Jammu and Kashmir, the Government of India agrees to begin to withdraw the bulk of its forces from that State in stages to be agreed upon with the Commission.

"2. Pending the acceptance of the conditions for a final settlement of the situation in the State of Jammu and Kashmir, the Indian Government will maintain within the lines existing at the moment of the cease-fire the minimum strength of its forces of its Army which in agreement with the Commission are considered necessary to assist local authorities in the observance of law and order. The Commission will have observers stationed where it deems necessary.

"3. The Government of India will undertake to ensure that the Government of the State of Jammu and Kashmir will take all measures within its power to make it publicly known that peace, law and order will be safeguarded and that all human and political rights will be guaranteed.

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"C

"1. Upon signature, the full text of the truce agreement or a communique containing the principles thereof as agreed upon between the two Governments and the Commission, will be made public."

Here I would make just one comment because this is the portion which has caused the greatest controversy, blocking progress towards implementation. These are the principles in A and B upon which the truce agreement would be based. One thing which is clear, and it has become clearer still if further clarification were necessary, is that it was meant that the truce agreement should be agreed upon and drawn up and even published—before any of these things could be done. It is perfectly obvious that if you are going to draw up a truce agreement containing certain principles, it cannot be the meaning and it cannot be expected that something which is to form part of the agreement must be done before the—agreement is reached or arrived at. That is one of the principal matters that has held up further progress.

Then there is part III of the resolution, which I have already read out to the Council [see para. 35].

These were the obligations undertaken by the two sides, and the second resolution is certainly supplementary. Somehow it has been said that the resolution of 5 January 1949 was only supplementary, as if it did not itself contain provisions binding on the two parties. It relates to the stage after what has been provided for in the 13 August resolution has been accomplished.

But only one comment is necessary on the provisions of the second resolution—it is not necessary to read it out—and it is this: the Council will have realized that the demilitarization so far envisaged in the 13 August resolution is the withdrawal from the "Azad" Kashmir side of the entire regular forces of Pakistan, and of the tribesmen and Pakistan nationals who had

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gone in for fighting; from the Indian-occupied side, of the bulk of the Indian forces. What would this leave behind? This would leave behind the "Azad" Kashmir forces—there could be no question of their withdrawing because they were the people of that territory--and it would leave behind the Indian Army, minus the bulk which is withdrawn and the State forces, the forces of the Maharajah. The further provision with regard to demilitarization, made in the 5 January resolution was that after the Plebiscite Administrator had taken over, he would effect the disposal of the military forces left on both sides. He could dispose of them as he deemed fit, having regard to the security of the State and the requirements of law and order and the freedom of the plebiscite. If he felt, "Well, on the 'Azad' Kashmir side there are twenty-five battalions, let us say, while no more than two are needed", it would mean that the rest should be disbanded. If he felt that on the Indian-occupied side the Indian forces were not needed at all, that they should be withdrawn, that the Maharajah's forces were enough to keep law and order and look after the security of the State, he would order accordingly. There was some dispute subsequently as to what "disposal" meant. We are not concerned here with what disposal means because that stage has not yet been reached.

These were two stages of demilitarization, one contained in the resolution of 13 August 1948, the other contained in the resolution of 5 January 1949. We have not reached the latter stage yet, but I have drawn attention to it because, later, before the United Nations Representative, it became India's position that India would not withdraw the bulk of its forces from the State on its side of occupied Kashmir unless there was also a large-scale disbandment of the "Azad" Kashmir forces. Therefore, as we shall see as we go along, the United Nations Repre-representative felt himself justified in making proposals which would combine the two operations. According to these the proposals, withdrawal should, on the one side, not only make provision for the withdrawal of the regular Pakistan forces, but should also make provision for the disbandment, a large-scale disbandment, of the local forces; and, on the other

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side also, the withdrawal, the demilitarization, should be carried to a point that would leave the minimum for the United Nations Plebiscite Administrator to dispose of when he took over.

I shall now carry on to the questions which have caused so much trouble. It has been said on the other side that assurances and clarifications were given by the Commission. They were given to both sides, and I state here categorically that assurances and clarifications given by the Commission are accepted completely by the Pakistan Government. I have no doubt that they will be accepted completely by the Indian Government also. We were so anxious while these exchanges were going on—and we were aware that certain assurances were given to us; it was perfectly natural and normal that certain assurances must have been given to the other side also—that we insisted with the Commission that the assurances given to us should be communicated to the Government of India and that any assurances that were given to the Government of India should be communicated to us, so that if we came to agreement on the resolutions we could agree to something in the same sense, understood by both sides in the same manner. This was my statement to the Commission.

As Foreign Minister of Pakistan I wrote a letter to the Commission on 6 September 1948 from which I quote:

> "The Government of Pakistan have not been informed of any clarifications and elucidations of the proposals contained in the Commission's resolution of 13 August 1948 that the Commission may have furnished to the Government of India. If no clarifications or elucidations have been furnished, no point in that behalf arises. If any clarifications or elucidations have been furnished by the Commission to the Government of India, it is necessary that they should be communicated to the Government of Pakistan and the latter's agreement to them secured. It is equally necessary that the clarifications and elucidations furnished by the Commission to the Government of

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> Pakistan should be communicated to the Government of India and their acceptance of them secured. The Commission will recognize that it is of the utmost importance that any agreement between the two Governments should be arrived at on the clearest possible basis, so that there is left no possibility of any misunderstanding of any of the matters agreed upon. In other words, it is essential that the two Governments should agree simultaneously to the same thing and in the same sense."

Therefore, it has never been the position of the Government of Pakistan that it will not accept the assurances given to the Government of India by the Commission. We accept all the assurances given by the Commission to the Government of India on any point with regard to the resolutions which have been brought to our notice, and anything to that effect contained in the reports of the Commission and its proceedings we accept as having been brought to our notice.

Then I made a statement to the Chairman of the Commission on 8 February 1949. I said that the Pakistan Government "did not consider itself to be bound in any way by any clarifications or elucidations that might have been given by the Commission to the Government of India"—meaning if they had not been communicated to the Government of Pakistan and accepted by us. Mr. Lozano replied that "this position was fully appreciated by the Commission". We were extremely anxious that nothing should be left in dispute lest trouble should arise subsequently. But unfortunately trouble has now arisen.

Then the Prime Minister of India made a statement in his Assembly on 7 September 1948 with regard to the acceptance of the resolution. He said:

> "The Commission told us that these proposals stood as a whole and while they were prepared to discuss any matter gladly, it was difficult—in fact, it was not possible for them to accept conditional acceptances, because if we made some conditions and Pakistan naturally other con-

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ditions, what exactly was accepted and by whom? So they said that these proposals were to be accepted as they were, and if there were conditions attached to them, it was not an acceptance but a rejection."

So that, from the position of both sides, it was quite clear that the resolutions were accepted as a whole and that there were no conditions attached to acceptance. As I have said, clarification is a different matter. Clarification means, "This is what the resolution means". A condition means, "We accept this, but subject to the condition which the resolution does not contain".

Now I approach the main question which has held up progress with regard to the implementation of the resolutions, and that main question is this. India contends that no progress with further implementation of these resolutions can be made unless Pakistan withdraws its troops before anything else happens, and that Pakistan is under an obligation to do so. That is their simple position. The equally simple position of Pakistan is that Pakistan is under an obligation to withdraw its troops in accordance with the conditions on which the truce agreement is to be based, as soon as the truce agreement has been reached. But there is no obligation with regard to the withdrawal of troops, no obligation with regard to the implementation of anything that is to be contained in the truce agreement before the truce agreement has been arrived at.

That is the crux of the difference on this matter. Our position is that the Commission's scheme meant that, first, there should be an agreement. Later on the Commission made it clear what it meant by agreement, and I shall draw the attention of this Council to that also. We had at one time said that there should be an agreement through a process of discussion between all three parties, but the Commission said, "No, that was not our meaning", and we accepted that. The Commission said, "We shall discuss with Pakistan the question of how and in what manner and through that stages its forces are to be withdrawn. We shall discuss with India separately – not with Pakistan

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taking part in the discussion—how the bulk of its force is to be withdrawn, but we shall make ourselves responsible for seeing that the agreement which we make and which will then become the truce agreement shall provide that the whole process will be synchrozined. Pakistan will begin the withdrawal of its forces. Then India will begin the withdrawal of the bulk of its forces. Then the process will be a synchronized process of withdrawal of both sides, and we shall see to it that at no time shall there be any advantage to one side or the other. In other words, no side shall be placed at any disadvantage." At one time they even said, "Neither side will be placed in a position where the other side could attack it".

That is, again, the essence of the difference, and I submit that this was the position. I proceed to establish it. Paragraph 10 of the reply of 27 August 1948, from the United Nations Commission for India and Pakistan, says:

> "In accordance with part II, B. I of the resolution, the Indian Government, when apprised that the Pakistan forces are being withdrawn from the State of Jammu and Kashmir, agrees to begin to withdraw the bulk of its forces from the State in stages to be agreed upon with the Commission. Synchronization of the withdrawal of the armed forces of the two Governments will be arranged between the respective High Commands and the Commission."

What could be clearer? "Synchronization of the withdrawal of the armed forces of the two Governments will be arranged between the respective High Commands and the Commission." The Commission subsequently explained—and I said we accepted the explanation although we had another interpretation—that this did not mean that the Commission would arrange the synchronization between the three of them together, but that one High Command and the Commission and the other High Command and the Commission would discuss the matter and then the arrangement would be that withdrawal would be synchronized.

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Then, in its letter of April 1949, this is what the Commission said:

> "As stated in paragraph 10 of the appendix to the letter of the Commission to the Government of Pakistan of August 1948. Synchronization of the withdrawal of the armed forces of the two Governments will be arranged between the respective High Command and the Commission."

In another letter, dated 28 April 1949,—the Commission said:

> "(*a*) With respect to section II [of the resolution of 13 August 1948], it is desired to emphasize to the Government of Pakistan that the schedules of withdrawals of the Pakistan troops and the bulk of the Indian forces will be faithful to the Commission's resolution of 13 August 1948 and represent a co-ordination of timing which in the view of the Commission will constitute a synchronized action."

In the third interim report of the Commission it is stated :

> ". . .The Commission also reiterated its statement (S/1100, annex 27) that synchronization of the withdrawals would be arranged between the respective High Commands and the Commission."

> And I have already drawn the attention of the Council to section C of the resolution itself, which obviously visualizes that the two processes would be synchronized. The truce agreement was to be published in advance of the implementation. Now, how can you publish an agreement in advance of implementation and then insist that the implementation by one side should be before the agreement has even been reached? In section C, the publication of the truce agreement is provided for.

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Then we come to the Commission's explanation what it meant by synchronization. In its third interim report it says:

> ". . .The Commission's reference to synchronization should be interpreted to mean that discussions with the Government of India concerning the withdrawal of the bulk of its forces would ensure without delay and lead to the establishment of a time sequence for the two withdrawals agreed upon between the respective High Commands and the Commission after the acceptance of the truce terms by both Governments. The Commission was not able to share the view of the Government of Pakistan that the only method of assuring this form of synchronization was by the full and free exchange of information between the Indian and Pakistan Governments regarding withdrawal plans. It was feasible in the Commission's judgment, and the Commission's military advisor had had this in mind, that the arrangements could be co-ordinated and supervised by the mediation party, namely, the Commission, so as to cause the two withdrawals to represent a dual operation which would be co-ordinated in timing and would result in a military situation in the State which was not such as to place either side at a disadvantage.
>
> "The Pakistan Government could not in reason expect, nor could the Commission have granted, a 'synchronization' which would have been incompatible with the terms of the resolution of 13 August. That resolution does not suggest that Pakistan should be entitled to make its withdrawals conditional upon the fact of the consulations envisaged between the Commission and the Government of India having led to an agreed schedule of withdrawal of Indian troops. What Pakistan could expect would be that assurance should be made that the withdrawals of the two armed forces would be arranged and carried out in such a way as to prevent the creation of a situation which might constitute an opportunity for one or the

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other party tor eopen the hostilities. The danger of such an eventuality should not be overemphasized.

"The Commission did take into account Pakistan's concern that the withdrawal should be synchronized. It repeatedly assured the Pakistan Government that this would be evident in the agreement itself, and it must be noted that the terms were to be published in full immediately upon the acceptance of the two Governments. The withdrawal plan for the Indian forces, a part of that agreement, was consequently to be published in advance of implementation by either side."

Could anything be clearer? Here a grievance is made: these people insist upon our carrying on with the two resolutions whose implementation they have themselves blocked; they blocked it because they had not witadrawan their forces; therefore, we are not obliged to withdraw our forces until the truce agreement is published. No such truce agreement has been reached, let alone published. On this point, we can get into a vicious circle for which the Commission did not provide. As a matter of fact, this matter has been referred to by everyone on the other side, from the lowest to the highest authority. Including they were revered - and I use that expression not merely as a matter of courtesy but from the bottom of my heart—the very revered President of India, whom I have known for many years and have held in great respect and reverence, as all Indians do. In an address to his Parliament, he asked how these resolutions could be complied with as long as Pakistan troops were not withdrawn. The position is that Pakistan troops cannot even begin to be withdrawn until there is some agreement between India and Pakistan and that agreement is published.

It is true that the Commission rejected our interpretation that we could take part in the discussion of the terms of that agreement between the Government of India and the Commission, and that that should occur with our consent. They said, "No ; all that you are entitled to -but you are entitled to

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that – is that the agreement which the Commission shall come to with the Government of India should provide for a synchronized withdrawal, which shall at no time place anybody at a disadvantage nor bring about a situation under which one side or the other could resume hostilities."

That has not been done. Mr. Josef Korbel was a member of the Commission. The Commission, as the Security Council will recall, was composed of five members, one nominated by each party. India nominated Czechoslovakia, Pakistan nominated Argentina, two members, Belgium and Colombia were nominated by the Security Council and one member, the United States, was agreed upon by the latter two. Mr. Korbel of Czechoslovakia who had been nominated by India, made a statement on the question on 4 March 1957 which was published in the *New Leader* of New York. He was the Chairman of the Commission at one of the most crucial times when all these assurances were given to both sides. His statement was as follows :

> "According to the Indian delegate, Pakistan prevented implementation of the section of the United Nations Commission resolution dealing with a plebiscite by refusing to carry out the other part recommending demilitarization of Kashmir. This is not true : Pakistan was not expected to withdraw her forces from Kashmir as long as there was no agreed-upon plan for simultaneous Indian withdrawal....."

It was perfectly clear that withdrawal was always subject to that condition, of course ; that once agreement was reached, Pakistan was to withdraw and, when India had been notified of a partial withdrawal then it was to begin its withdrawal. The rest would ensue naturally. This was the agreement that was reached. What happened ?

Mr. President, perhaps you would like to break off here for about ten minutes, as I think you intended.

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The meeting was suspended at 5 p.m. and resumed at 5.15 p.m.

The PRESIDENT : I invite the representative of Pakistan to continue his statement.

Mr. ZAFRULLA KHAN (Pakistan) : I might add one sentence to what I said shortly before the Council adjourned for the brief recess. I had made a reference to the revered President of India, but I wish to say in that connexion that I did not mean to imply in the least that the President had himself interpreted the resolution and said that he had come to that conclusion, or had in any way misinterpreted it. As we all know, he is the constitutional Head of Government, and obviously that was the explanation placed before him by the Government and he accepted that explanation and is under that impression, though that is not the correct interpretation of the resolution.

Now, what happened with regard to the actual implementation ? On 2 March 1949, the Commission wrote a letter to the two Governments, inviting the representatives of the two Governments to present for discussion proposals for the implementation of part II of the resolution of 13 August 1948. I shall presently read out that letter, and it will be quite clear from that letter, I venture to submit, that at that date the Commission put the same interpretation upon how the truce agreement was to be reached that we put upon it and subsequently presented to the Commission. By that time, the negotiations with the Government of India on that point of the truce agreement had come to a deadlock. The Commission – and I pay a tribute to it—very ingeniously reinterpreted its resolution so as to meet the Indian point of view and yet perhaps obtain the same result in substance. As I have said, our interpretation was that there were to be joint discussions : that India was to know what our proposals were, and we were to know what their proposals were ; and both sides were to know what the agreement preached by each side was, in the normal way of teaching an agreement. But later on, as will be

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seen, India laid down the condition that the proposals that India submitted to the Commission should not be communicated to the Government of Pakistan and, not only that, but should not even be communicated to the Security Council—so that up to now even the Security Council does not know what were the proposals made by India with regard to the withdrawal of the bulk of its forces from the State of Jammu and Kashmir.

I shall now read out the letter of 2 March 1949 from the Chairman of the Commission :

> "On behalf of the United Nations Commission for India and Pakistan I have the honour to inform you that the Commission has been gratified to note that since the cease fire came into effect, the Governments of both India and Pakistan have continued to take action on certain matters on which agreement was reached under part II of the Commission's resolution of 13 August 1948. It has learned with interest that the Commanders-in-Chief of India and Pakistan met on 15 January 1949 and discussed in detail matters relating to the cease fire, as well as certain aspects of the truce."—It repeat that : not only the cease fire, but also certain aspects of the truce—"Further the Commission understands that the tribesmen have now withdrawn, that certain contingents of regular forces of both Dominions have been withdrawn, and that steps have been taken to stabilize the cease-fire line.
>
> "The Commission considers that the implementation of the true is the most urgent matter now awaiting action by the two Governments. In the desire to offer such assistance as it may ....."—according to them, the agreement has to be reached by the two Governments, but the Commission will offer assistance—"the Commission invites the Government of India and the Government of Pakistan to send their civil and military representatives to meet with its Truce Sub-Committee and its Military Adviser."

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They are both invited to come to New Delhi. If the subsequent interpretation adopted by the Commission had been the correct original interpretation, they would have met with the Indian representatives in New Delhi and with the Pakistan representatives in Karachi. But they were both invited to New Delhi, in these words.

> "The Commission trusts that Monday, 7 Mach 1949, at 4 p.m. will be a convenient time and the official temporary headquarters of the Commission at Baroda House, New Delhi, a convenient place for its meetings.
>
> "The Commission suggests that, in order to advance the work as quickly as possible and to build upon discussions previously held, the representatives of your Government be prepared to inform the Sub-Committee of the measures already taken by your Government with respect to the truce agreement and to present for discussion proposals for the further implementation of part II of the Commision's resolution of 13 August 1948."

These proposals were to be presented at the meeting of the two Governments with the Commission on the date that was suggested. What happened actually was that the Pakistan representatives, who had taken a scheme for the truce agreement with them, presented it to the Commission or to the Truce Sub-Committee of the Commission. When the representatives of India were asked to present their proposals, they did not object and say that they could not present them in the presence of the Pakistan representatives or to the Truce Sub-Committee when they were considering the other side's proposals also or that separate meetings should be arranged. They said that they were ready with their proposals, but inasmuch as the Commander-in-Chief was absent from Delhi they needed a few days more so that he could work on the proposals before they could be put before the Commission. So the meeting was adjourned. At the adjourned meeting they said that the proposals had been seen by the Commander-in-Chief but as the Prime Minister was

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out of Delhi and was expected back within a few days, there would be a delay of two or three days. Then that delay took place. Finally, when they did present their proposals to the Commission, under the seal of secrecy, they laid down as a condition that the Commission was not to disclose those proposals to the Pakistan representatives, nor to anybody else, until agreement was reached. Then, of course, the agreement might be published as to what it was, but up to this day neither the Pakistan Government nor the Security Council nor anybody else knows what those proposals were.

That is where the implementation of part II of the resolution of 13 August 1948 came to a halt. But the Commission proceeded with part of the implementation, that is to say, to lay down the cease fire line on the ground—which was achieved, believe, some time in July. And the Commission, in a sence, certified, affirmed, that part I of the resolution had been complied with. In its memorandum of 26 August 1949, it stated :

> "The Commission subsequently decided to seek to bring about agreement on a cease-fire line through meetings of the military representatives of the two Governments. The Commission is highly gratified that these meetings, held in Karachi from 18 to 28 July 1949, resulted in the definition of an agreed cease-fire line, thus completing the implementation of part I of the resolution of 13 August 1948."

But complaints still go on, on the Indian side : How can you approach even the question of the implementation of part II, because part I has not yet been implemented ? But here is the finding of the Commission. There is also the Press release issued by the Commission on 22 September 1949, which reads in part as follows :

> "When the Commission in February 1949 returned to the subcontinent the cease fire was in effect, and in so far as part I of the 13 August resolution was concerned there remained only the demarcation of the line on the ground.

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The Commission was hopeful that this would be expeditiously achieved and that a prompt implementation of the truce under part II might take place.

".....

"It invited the Governments to send military representatives to a meeting in Karacni with the Commission's Truce Sub-Committee on 18 July 1949. Agreement was reached on 28 July on the entire cease-fire line, and was ratified without delay both Governments."

So that in actual fact pact I of the resolution was deemed to have already been implemented, and that is why they wanted to continue with part II. The same finding was made by the United Nations Representative for India and Pakistan in his third report, in which he says :

"Part I deals with the cease fire. The primary objectives of the UNCIP during the first stage of its activities was to obtain a suspension of hostilities. The cease fire was agreed upon between the two parties and made effective on 1 January 1949 and, as a completion of this part of the resolution, a cease-fire was agreed upon between the two Governments under the auspices of the UNCIP in the Karachi Agreement of 27 July 1949. The line was demarcated subsequently on the ground.

"Therefore, part I of the resoultion of 13 August 1948 can be considered implemented."

The same was latter reaffirmed by the United Nations Representative. For instance, in the same report, he says :

"From the above it appears that since the resolution of 13 August 1948 was agreed upon, and since the suspension of hostilities came into effect on 1 January 1949, there has been a considerable reduction in the forces on each side of the cease-fire line.

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"Therefore part II of the resolution of 13 August 1948 has to a considerable extent, already been implemented."

It was not that you could not approach the implementation of part II. Actually certain sections of that part had already been implemented, for instance, the withdrawal of the tribesmen : as soon as hostilities ceased, the tribesmen saw no reason to remain and they therefore left. But the main implementation of part II was blocked by the failure to come to an agreement with regard to a scheme to withdraw the bulk of the Indian forces from Kashmir.

As I said earlier, in connexion with part I, two points have occasionally been raised, one, the non-augmentation of the armed forces, and the other, the efforts of the Governments to pacify public opinion. It has been said that Pakistan has been in default with regard to these two, that we have not observed the non-augmentation of the forces on the cease-fire line on our said and we have not made any effort to pacity public opinion. Non-augmentation is a passive element and would, to a large extent, be affected by the actual situation. For in stance, through the passage of time it might become necessary to make different dispositions and so on. If by non-augmentation you mean no appreciable increase in numbers, then the fact is there has been no increase in numbers on our side. As a matter of fact, the contrary has taken place ; there has been a decrease in numbers. During the fourteen or fifteen years that have passed—I am not a military expert so I will not take upon myself the responsibility of saying that the military potential has not been effected in any sense—the military potential has been affected on both sides. Certain improvements must have been made in equipment and so on, on the Indian side, and certain improvements must have been made in equipment, on the Pakistan side. How can you determine non-augmentation except by saying—and I am authorized by my Government to say—that there has been no appreciable

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increase, indeed no increase whatsoever, in the number of troops on our side. There has definitely been a decrease.

What regard to the pacification of public opinion, public opion does sometimes become excited over events which happen outside the areas concerned and which exacerbate it. Then this question is dragged in. This is a thing which no body can prevent. There can be no guarantee, and neither Government gave a guarantee, that public opinion would never become excited. The Governments were to go on making efforts and I would urge that this was an obligation taken by both sides. If I am told of concrete measures taken by India in this respect, I shall be able to matcn them measure for measure on the Pakistan side. If there has been any technical failure in regard to making appeals for pacification on the other side too. But that is not my case. My case is that this is an imponderable obligation. The Governments have done what they could. Were I making debating points, I would say that India has failed in that respect, and has not tried to pacify public opinion. Public opinion does get excited, and during the last year there have been unfortunate cases in different parts of India. I understand that today there has unfortunately been a repercussion on the Pakistan side. This is the kind of thing which nobody can prevent. The Government has tried to keep the situation under control, but it is not always able to do so.

Therefore, both according to the Commission's findings and according to the finding of the United Nations Representative, Mr. Graham, part I has been implemented. The implementation of part II, according to us, has been blocked by a failure to reach agreement with regard to the scheme of withdrawal of the troops, and this has been due to the fact that the Commission was not satisfied that the scheme presented by India was balanced according to the resolutions.

With regard to these questions of non-augmentation and failure to pacify, perhaps I may draw the attention of the Council to two statements made in previous meetings of the

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Security Council. At the 797th meeting, on 25 October 1957, the representative of the United Kingdom made the following statement :

> "...In this paragraph [paragraph B of part I of the resolution], both High Commands agree to refrain from taking any measures that might augment their military potential. This is clearly an important preliminary to the next stage – the stage of the withdrawal of the troops of Pakistan and the withdrawal of the bulk of the Indian forces, to which both sides stand engaged. Clearly, there is a connexion between augmentation and the removal or reduction of forces. Augmentation makes removal or reduction more difficult. Removal or reduction does away with any further problems about augmentation.
>
> "It was originally contemplated that the three parts of the resolution of 13 August 1948 should be implemented in quick accession ; and, as early as 1949, the Commission for India and Pakistan was pointing out the difficulties arising from delay. Undoubtedly the passage of time has added to the difficulties about the implementation of paragraph B. In the further eight years since 1949, new difficulties have arisen. Armies have become more efficient; old equipment has been replaced ; new roads have been built on both side." [797th meeting, paras. 12 and 13.]

This kind of thing is bound to go on. At the same meeting, on 25 October 1957, the representative of Iraq said :

> "We wonder, therefore, if the new stand of the Government of India regarding the non-implementation of part I of the resolution of 13 August 1948 is not on the one hand an afterthought, and on the other, an attempt to reopen issues which have long been closed. In this respect it should be asked : if Pakistan has not implemented part I, why did India enter into negotiations for the implementation of part II, the truce agreement ? It was in January 1949 that India should have raised this matter.

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> In fact, the negotiations conducted by the Commission for India and Pakistan and the United Nations representatives were all directed towards finding a basis for the formulation of the truce agreement." [Ibid., para. 67.]

Part I, paragraph E, stipulated that both parties should appeal to their respective peoples to maintain an atmosphere favourable for negotiation. India produces arguments and information to show that Pakistan has not only failed to make such appeals but has also indulged in what they call hostile propaganda. On the other hand, there are statements coming from the Indian side that can be interpreted as showing a hostile attitude towards the settlement of the dispute. The dispute has dragged on for such a long time, during which there have been so many events and declarations that it is hardly possible to make such statements a legal issue so as to block the possibility of proceeding to a settlement.

As a matter of fact, these are both strong considerations in favour of proceeding with the implementation so that the matter can progress towards a settlement. If there has been augmentation—I do not admit that there has been, but assuming for one moment as a matter of argument—than in the first place, let somebody who has had the opportunity of observing these things say whether there has been an augmentation, and we shall undertake at once to reduce it. In the second place, even if there has been augmentation, the remedy is demilitarization. That will take care of the augmentation also. An augmentation does not therefore mean that we are free of our obligations ; it does not mean that if there have been augmentations of the forces on the Pakistan side of the cease-fire line the people of the State of Jammu and Kashmir must therefore be bound by their accession and cannot express their wishes freely with regard to the accession.

Assuming that there has beed an improvement in the condition and effectiveness of any part of the forces, it applies to both sides. We believe that the crux of the problem passage of time without progress towards the objectives of the resolution.

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It was accepted that the implementation of part I would be followed immediately by the truce agreement, and the implementation of the truce agreement under part II to some degree has already taken place. The conclusion of the Commission with regard to its efforts at arriving at a truce agreement, and which appears in its third interim report, was this :

> "In replying to the Commission's truce terms of 28 April (annex 21) the Government of India did not specifically deal with the question of withdrawals, but in a further reply to the truce terms dated 17 June (annex 50) the Indian Government presented its own scheme for the withdrawal of its forces, reaffirming its refrence to the interdependence of the phasing of the withdrawal of Indian forces and the progress made with the disbanding and disarming of the 'Azad' Kashmir forces...".

The Government of India then wanted to jump from the first resolution to the second resolution and bring the the two process together, whereas the second process had to be carried out by the Plebiscite Administrator after he was inducted into office. Now continuing :

> India asked that its scheme not be communicated to the Government of Pakistan until a truce agreement had been arrived at. The Indian plan was, in the opinion of the Commission, far from a fulfilment of India's undertaking under the terms of the 13 August resolution."

The Commission was under the obligation not to disclose the Indian scheme, but this was the Commission's conclusion, that the plan submitted to the Commission was, in the opinion of the Commission, "far from a fulfilment of India's undertaking under the terms of the 13 August resolution". And the Commission adds this :

> "As has been seen from the discussion of the 'Azad' problem, and from the foregoing discustion on withdrawals, India is not prepared to withdraw such part of her

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forces in Kashmir as might be characterized as the 'bulk', whether measured quantitatively or qualitatively, unless agreement with Pakistan on the large-scale disbanding of the 'Azad' forces is reached."

That is how the matter was blocked before the Commission. They wanted to telescope the two procedures, but there was the important condition to be fulfilled in the meantime, that the Plebiscite Administrator, who at that time, it was agreed, should be Admiral Nimitz, should take over, and when the plebiscite proceedings began, then he could arrange the disposal of the rest of the forces. But they began to insist that the "Azad" Kashmir forces had to be disbanded on a large scale. We shall also see that the United Nations Representative later attempted that, and that it did not meet their approval either.

The efforts of the United Nations Representative to effect demilitarizations or even a summary of those efforts would take considerable time, and I am already behind in my schedule: rather. I would be up to my schedule if my expectation with regard to the time available had been fulfilled. However, I would draw attention to the conclusions that were reached by Mr. Graham, the United Nations Representative: that at various times he made various proposals, that he tried to bring about a demilitarization in strict accordance with the resolutions: that he tried to bring about demilitarization in accordance with India's demand that the two processes laid down separately in the two resolutions should be combined. It might be said generally that, with regard to his main proposals, Pakistan was willing to accept, India was not willing to accept. If necessary, if this position is questioned, I will be able to confirm what I have stated from the actual reports. I have documents here, but out of considerations of time I will not quote from them at this moment.

The final position, I believe, was as follows. In the process of this attempt at demilitarization, on 16 July and 2 September 1952, Mr. Graham suggested the retention of a minimum force of 6,000 "Azad" Kashmir troops on the Pakistan side of

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the cease-fire line, and 18,000 on the Indian side—or of brackets of 3,000 to 6,000 on the Pakistan side and 12,000 to 18,000 on the Indian side : that is to say, these brackets to be brought to a definite figure by agreement. First the brackets should be accepted, then negotiations could take place.

While Pakistan observed that this proposal left too many soldiers in the State, it declared itself, subject to that observation, prepared to accept the proposals of the United Nations Representative, India. on the contrary, maintained that it was impossible to reduce the absolute minimum figure of 21,000, that the militia on the Indian side would in no circumstances be included in these calculations, and that this minimum on the Indian side would obtain only on a complete dishandling and disarmament of the "Azad" Kashmir forces and that there would be no question of further disposal by way of withdrawal or reduction of the Indian forces by the Plebiscite Administrator: in other words, there must be at least 21,000 on their side, plus the militia : but the "Azad" Kashmir forces should be completely disbanded, to be replaced by a civilian police force.

As I was authorized by my Government, with regard to this paricular case, to submit to the Security Council the suggestion—you can call it a proposal—to let the United Nations Representative in consultation with his military advisers report what, in his opinion, is needed to be done in respect of the withdrawal of forces to bring about complete compliance with the UNCIP resolution. On behalf of the Government of Pakistan, I put on record the assurance that we shall accept his recommendations, and we trust that India will also accept them. As soon as the acceptance of both parties has been signified and the truce argreement is signed, we shall at once take in hand the beginning of the withdrawal of our troops in accordance with the scheme submitted in the report of the United Nations Representative, and shall there-after continue to withdraw in accordance with the schem till the whole of the Pakistan regular forces and the bulk of the Indian forces have been withdrawn from both sides of the cease-fire line. The rest

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can be done by the Plebiscite Administrator under the resolution of 5 January 1949.

Now, another matter that is raised is : what a long time has elapsed. It is said that a long time has elapsed and, therefore, we should look at the situation as it stands today and more or less accept that situation, subject to some adjustments. With regard to the lapse of time, surely the crucial question is : To what has the delay been due, and upon whom does the main responsibility for the delay fall ? Otherwise you will find, in international agreements, that if one side finds it awkward to carry out the agreement it has entered into, it will find all sorts of excuses not to carry it out, and after some time has elapsed—not even a long time – and its tactics have successfully averted the fulfilment of its agreement, it will say : "A long time has elapsed. Now nothing need be done. Let us be satisfied with the situation". But the whole question is, what is the delay due to ?

Again I state that if Pakistan has deliberately blocked the implementation of the resolutions and if, this fact having been determined and pointed out to it, it refuses to rectify its default in the speediest manner and at the earliest opportunity, then Pakistan is not entitled to come to the Security Council and to ask the Council to take measures towards the implementation of the resolutions. Then it is not entitled to do so because of its default, because it is delaying matters, because a long time has passed. But if it should be found that it is not the fault of Pakistan, then how does it result therefrom that whatever the situation is it should be accepted. Subject to the over-all consideration all the time that, although, as I shall later submit, the parties to the dispute here are Pakistan and India, the people affected are the people of Kashmir. How does Pakistan's default or delay – assuming that such has taken place—deprive the people of Kashmir of the right to determine to which State they shall accede ? That I shall come to later.

Pakistan will not come to the Security Council and ask

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for implementation of the agreement if it is determined that Pakistan is in default and refuses to rectify its default. However, supposing it is determined that it is not Pakistan's fault and supposing it is detemined - although the two questions are different, it is enough if we find that Pakistan is not in default—supposing it is determined that it is India's fault, that the interpretation that India places on these paragraphs which are in dispute is not the correct interpretation, it is not what they agreed to, it is not the sense of the resolution as understood by both sides, it is not the sense in which the Commission meant it, surely then India cannot turn around and say, "We blocked the implementation of these resolutions but now because we have successfully blocked it for so many years, surely it is unjust to call upon us to go on with the implementation of it now".

That cannot be based on any moral principle, on any principle of international morality, on any principle of international law, on any principle of domestic law that might apply to it. How can the passage of time, which is not due to the default of the other party, affect the other prejudicially ? How can the passage of time which may be due, if it is so found, to the default of the party which is pleading the passage of time, put it in a position to say, "We are no longer bound by the obligations that we took". That is the crux of the problem that the Security Council has to face.

In view of the repeated efforts made by UNCIP and the United Nations Representative and of India's rejection more than once of their proposals, which Pakistan was willing to proceed upon, it cannot be said that the delay in the implementation of the UNCIP resolutions and in progress towards a plebiscite could be charged to Pakistan. Surely a party cannot take advantage of its own default. Curiously enough, something like this was raised before the Commisson. The Commission itself had at one stage said, "If the Plebiscite Administrator should find it impracticable to carry out the plebiscite, he might have recourse to some other means to ascertain the wishes of the people in respect of accession." This

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question was raised before the Commission. The Commission had made a statement to India which is point 3 on aide-memoire 1, dated 21 December 1948, embodying the substance of the discussion on 20 December 1948 between the Prime Minister of India and Mr. Lozano, who represented the Commission. I quote :

> "... As regards the third point, he [Mr. Lozano] said that the Commission wished the possibilty of a plebiscite to be explored first. Should the Plebiscite Administrator, however, find a plebiscite to be impracticable, the way would be open to consider other methods for ensuring a free expression by the people of Jammu and Kashmir of their wish regarding the future status of the State."

One of the Pakistan Ministers, Mr. Gurmani, made a request for a clarification on this point, and this was the clarification given.

> "... He [Mr. Gurmani] wanted an assurance that lack of co-operation from either side would not be regarded as a practical and technical reason for not holding the plebiscite. Mr. Lozano gave this assurance."

If there is lack of co-operation, how can you then turn around and say, "Oh, well, so long as it has not been carried out, let it rest, it cannot be carried out".

I quote from point 1 of the aide-memoire handed to Mr. Bajpai by Mr. Lozano, the Colombian representative, and the Chairman of the Commission. It was a statement to Mr. Bajpai, It said :

> "It was not intended at that stage to define what might constitute a 'technical or practical reason' for not holding a plebiscite. It is true that a lack of co-operation from either side could create obstacles which, in fact, might make the organization and holding of a plebiscite extremely difficult, if not impossible. However, the

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Commission feels that the principles embodied in the resolution of 5 January are not only binding on Governments but are based on and call for their fullest co-operation. Therefore, the Commission does not envisage, a situation in which either side will withhold its co-operation.

"It would seem that a lack of co-operation, should it occur, would be considered not a 'practical reason' but a breach of commitments formally undertaken by the Governments of India and Pakistan. In this event, the Plebiscite Administrator would presumably then report to the Security Council, through the Commission, not that the holding of the plebiscite was impossible for 'practical or technical reasons', but rather that the lack of co-operation of either of the parties had rendered it impracticable."

This would be a breach of the obligation. It cannot be said that this cannot be done now.

The next topic that I will take up is the following. It has often been urged, and I have heard it said also by some members of the Security Council, that in principle or in effect the people of Kashmir have expressed their wishes freely concerning the question of accsseion in the elections that have been held in Kashmir and that therefore a plebiscite is no longer necessary. Certainly, that is the case of India and certain members may have mentioned it ; well that is what has been said. Possibly it has some appeal to them ; that I do not know. It is a matter, therefore, that requires being looked into.

Speaking in the Upper House of the Indian Parliament, the Prime Minister of India, referring to my statement before the Security Council on Friday last said :

"Stress was laid on what I said in 1948 about the people of Kashmir being consulted. Of course, I said it Subsequently, a great delay has happened. The people of

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Kashmir have been repeatedly consulted in the form of general elections."

In the first place, I did not on any occasion on Friday say that the Prime Minister of India has said that the people would be consulted. I said each time that the Prime Minister of India has said that they had given a pledge, that they had given assurances, that they had made promises, and today I quoted something which said that they were bound in honour, to have this question settled through a free and impartial plebiscite, in accordance with the freely expressed wishes of the people, not that the people would be consulted in this respect. That is a different thing altogether.

I would again draw attention to statements of Sir Benegal N. Rau as representative of India before the Security Council on 9 March 1951 and on 29 March 1951. In his first statement he said :

> "... Accordingly, provision was made in the Indian Constitution for a constituent assembly for settling the details of the Kashmir constitution "– that is with regard to the reality of this process of consultation or the process of the peoples' expressing their wishes on the question of accession—"Will that assembly decide the question of accession ? My Government's view is that, while the constituent assembly may, if it so desires, express an opinion on this question, it can take no decision on it." [536th meeting, p. 8.]

And, as I have said, Sir Benegal Rau was not only a distinguished representative of India before the Security Council but a very distinguished lawyer and a constitutional lawyer of the highest standing, both in India and in Pakistan before partition. And, taking both countries together, I do not think that even today I know anybody who has the standing in constitutional law that Sir Benegal Rau had.

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Then, on 29 March, he said :

"... Some members of the Council appear to fear that in the process the Kashmir constituent assembly might express its opinion on the question of accession. The constituent assembly cannot be physically prevented from expressing its opinion on this question if it so chooses. But this opinion will not bind my Government or prejudice the position of this Council." [538th meeting, p. 3.1

Of course, these statements were made when this matter was brougt to the notice of the Security Council.

The Security Council adopted in this connexion a resolution on 30 March 1951, and this is the relevant portion :

"The Security Council.

"...

"*Reminding* the Governments and authorities concerned of the principle embodied in the Security Council resolutions of 21 April 1948, 3 June 1948 and 14 March 1950 and the United Nations Commission for India and Pakistan resolutions of 13 August 1948 and 5 January 1949, that the final disposition of the State of Jammu and Kashmir will be made in accordance with the will of the people expressed through the democratic method of a free and impartial plebiscite conducted under the auspices of the United Nations,

"*Affirming* that the convening of a constituent assembly as recommended by the General Council of the 'All Jammu and Kashmir National Conference', and any action that Assembly might attempt to take to determine the further shape and affiliation of the entire State or any part thereof would not constitute a disposition of the State in accordance with the above principle".

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So the Security Council was quite clear. It said, "You may set up a constituent assembly but any action it takes in respect of the accession will have on effect at all."

I am reminded that Sir Benegal Rau had been constitutional adviser to the Indian Constituent Assembly before he was appointed India's representative to the United Nations.

There was a telegram sent by the President of the Security Council to the Foreign Minsters of India and Pakistan on 29 May 1951 which puts thus matter absolutely beyond doubt. It states :

"...

"Member of the Security Council, at its 548th meeting on 29 May 1951, have heard with satisfaction the assurances of the representative of India that any constituent assembly that may be established in Srinagar is not intended to prejudice the issues before the Security Council, or to come in its way.

"On the other hand, the two communications to me as President of the Council from the representatives of Pakistan set forth in documents S/2119 and S/2145, contain reports which, if they are correct, indicate that steps are being taken by the Yuvaraja of Jammu and Kashmir to convoke a constituent assembly, one function of which, according to Sheikh Abdulla, would be a 'decision on the further shape and affiliation of Kashmir'.

"It is the sense of the Security Council that these reports, if correct, would involve procedures which are in conflict with the commitments of the parties to determine the future accession of the State by a fair and impartial plebiscite conducted under United Nations auspices.

"It seems appropriate to recall the request contained in the resolution of 30 March that the parties create and maintain 'an atmosphere favourable to the promotion of

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further negotiations and to refrain from any action likely to prejudice a just and peaceful settlement'. Then Council trusts that the Governments of India and Pakistan will do everything in their power to ensure that the authorities in Kashmir do not disregard the Council or act in a manner which would prejudice the determination of the further accession of the State in accordance with the procedure provided for in the resolutions of the Council and of the United Nations Commission for India and Pakistan."

Now it is contended : "That first election and then the two subsequent elections to the Assembly in Kashmir have been instruments for the free expression of the will of the people of Kashmir. What more is needed ?"

Then again, on 24 January 1957, the Security Council adopted a resolution in the course of which it said :

"*Reminding* the Governments and authorities concerned of the principle embodied in its resolutions of 21 April 1948, 3 June 1948, 14 March 1950 and 30 March 1951, and the United Nations Commission for India and Pakistan resolutions of 13 August 1948 and 5 January 1949, that the final disposition of the State of Jummu and Kashmir will be made in accordance with the will of the people expressed through the democratic method of a free and impartial plebiscite conducted under the auspices of the United Nations.

"*1. Reaffirms* the affirmation in its resolution of 30 March 1951 and declares that the convening of a Constituent Assembly as recommended by the General Council of the 'All Jammu and Kashmir National Conference' and any action that Assembly may have taken or might attempt to take to determine the future shape and affiliation of the entire State or any part thereof, or action by the parties concerned in support of any such action by the

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Assembly, would not constitute a disposition of the State in accordance with the above principle."

How many times has an affirmation to be affirmed to be understood as being effective ?

At a press conference reported in the *Hindustan Times* of New Delhi on 14 March 1951 the Prime Minister of India said this :

"During the last three years or so, we have naturally thought of giving some kind of organized expression to the Government there"—that is, in Kashmir— "some popular legislature or something. Because of the troubles in the State, that could not be done. Ultimately, the State Government decided, quite rightly, they should have elected representatives out of whom a Cabinet might be chosen and which could decide also many other questions. If your question is whether this comes in the way of the Security Council of any decision, then it does not come in the way. We have said that quite clearly.

"The Constituent Assembly is essentilly meant to give constitutional background—additional background - to the Government. Of course, nobody can prevent an Assembly like that from expressing its views on any matter. So far as we are concerned, we have given our word in regard to the plebiscite, and if the conditions are such as we have agreed to, we are perfectly prepared to go on with it".

Then the Prime Minister made a statement on April 1951, at Srinagar, in the heart of Kashmir, which is also reported in the *Hindustan Times* as follows :

"I do not understand the objections of certain countries to the proposed constituent assembly in Kashmir. It has been repeatedly made clear that it is as internal matter."

On 10 November 1951, at the 566th meeting of the

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Security Council, Sir Gladwyn Jebb quoted the following statement of the Prime Minister of India :

> "We have made it perfectly clear in our statement in the Security Council that the Kashmir Constituent Assembly, so far as we are concerned, does [not come in the way of a decision by the Security Council : that stands completely."

In the *Statesman* of New Delhi of 22 June 1952 the following was said, and this also is a statement by the Prime Minister :

> "When the Constituent Assembly [of Kashmir] met, it was convened in consultation with us and with the goodwill of the Government of India. We did not look upon it naturally as something that will settle the problem which is before the United Nations. We have given an assurance to the United Nations that we will abide by it.
>
> "When the Security Council asked us about it, we made it clear to them again that the Kashmir Government had every right to have the Constituent Assembly frame the internal constitution, but so far as we were concerned, we would not be bound by their decision on the question before the Security Council.
>
> "Observe the words, 'we were concerned'. We have given an assurance to the United Nations about, let us say, a plebiscite or whatever it is. We stand by it. We cannot get out of it because a third party does something. But that does not prevent the third party from doing something.
>
> "When the Constituent Assembly met in Kashmir for the first time, I might inform you, it was their intention to pass a resolution forthwith confirming the accession to India. We asked them not to do it so as not to be embarrassed before the United Nations. Simply because of that, we told them, the fact of accession is there and,

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naturally, you will have to face it in the course of your constitution. But why do something which might be interpreted by the United Nations people as trying to bypass them ? So it was at our instance that they did not pass the resolution."

I will not say that it was at the Government of India's instance that they passed that resolution subsequently. But supposing that they did it of their own volition or at anybody else's suggestion, the principle is still the same.

Then, on 22 February 1954, the Prime Minister made a statement in the Indian Parliament, as follows :

"This process (of the Constituent Assembly in Kashmir farming a constitution for the State) started two or three years ago. We made it clear then that it is perfectly right, it is perfectly open to the people of Kashmir to frame their Constitution...but that so far as our international commitments were concerned, *i.e.*, India's—we naturally would honour them, unless something else happened. But the fact that the Constituent Assembly decided something was a fact, an important fact, because it represented the wishes of elected people in Kashmir. But it cannot come in the way of our absolving our-selves from our international commitments, in regard to a plebiscite, in regard to anything. That was the position and that remains so. To ask me, as I have been asked by the Foreign Minister of Pakistan, to repudiate the Constituent Assembly's decision, is manifestly, if I might use the word with all respect, quite absurd. There is no question of my repudiating what the Constituent Assembly expresses as its wishes. But as I said, our international commitments remain, and we are going to proceed with them, in due course, always in consultation with the Government of Kashmir."

I did not mean anything more than this by "repudiation", but it does not matter—I am always talking "absurdities". As

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a matter of fact, it has been reported that yesterday, in the Upper House of the Indian Parliament, the Prime Minister was pleased to remark that my statement before the Security Council on Friday was a bundle of lies and was based on falsehoods. Well, I have always respected the Prime Minister of India ; I shall continue to respect him nevertheless. The only bundle I used was a bundle of his statements, which I quoted. If those are wrong, I was lying ; but if those were right, then I was not uttering any lies.

Then, on 5 March 1954, the Prime Minister of India addressed a letter to the Prime Minister of Pakistan, as follows :

> "Ever since the Constituent Assembly came into being, more than two years ago, our position in regard to it has been perfectly clear and has been stated in the Security Council and elsewhere. We said then that the Constituent Assembly was perfectly free to decide, as it liked, in regard to the State's accession or other matters, but, so far as we were concerned, we would abide by our international commitments."

In answer to a question in the Indian Parliament on 25 February 1955, the Prime Minister said :

> *Question* : "In view of the fact that a Kashmir Constituent Assembly has ratified the accession of the State of India, what will be the terms of discussion on Kashmir with the Pakistan Prime Minister ?
>
> *Answer* : "A question like this cannot be solved unilaterally."

There are other statements, but I do not think that it is necessary to bring in any other people. Surely the Prime Minister's own word on behalf of his Government should be sufficient.

It has been said that these have been three elections in

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Kashmir : one in 1951, a second in 1957, a third in 1962. Without prejudice to the argument which I have already submitted to the Security Council on this point. I would invite it to examine what kind of elections they were, how free they were. How much can they be regarded as expressing the free wishes of the people of Kashmir with regard to accession, or with regard to any matter whatsoever ?

This is what happened with regard to the 1951 elections. The official proclamation of the convening of a constituent assembly in Kashmir was issued by the Head of State of Indian-occupied Kashmir on 30 April 1951. According to this proclamation, the assembly would be summoned in order to frame a constitution for the State. The first elections to the assembly were to be held in the Kashmir Valley on 22 September 1951. Forty-five seats of the assembly were assigned to the Kashmir Valley. All the forty-five nominees of the National Conference for the forty-five constituencies in the Kashmir Valley and the Dogra were declared to have been returned unopposed. Not one constituency was opposed. Well, either the people of Kashmir have been trained to a degree higher than the people were at the best time of the free city states of Greece, so that every one of them knows, who is the best person to discharge a particular function and, when those persons were nominated, everyone said that he was perfect ; or there was no freedom. Fortyfive seats—not one contested. Therefore, no election. Wonderful !

People can sometimes overshoot the mark - and not only overshoot the mark, but overshoot it by 360 degrees. No polling took place on the day fixed for the balloting. This was in contrast to the election of the State legislature which was held under the Maharajah's oppressive system. He had an assembly too and he had a very oppressive government. And even under him, in January 1946, when as many as twelve parties contested the election, here the nominees of one party only were in every instance returned unopposed. Not that they succeeded ; they simply were returned unopposed. Nobody stood in opposition. And yet, nobody's nomination paper was

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declared valid. Even in Jammu, while the polling had to be held in October - this was the Kashmir Valley area – there were contests only in two constituencies out of thirty, where some independent candidates opposed the National Conference.

On 30 October 1951 *The New York Times* reported that, "even that opposition dropped down during the last moment". The net result was that seventy-three out of seventy-five of the candidates of the National Conference were declared to have been elected without opposition in the whole of the State.

In its issue of 14 June 1951, *The Times* of London commented on the elections of 1951 as follows :

> "The National Conference won an absolute majority in the so-called Kashmir Constituent Assembly before the 'election' had been held at all. This almost farcial result" - why "almost" ? Well, the British have always been known for their under statements—"This almost farcial result of the introduction of adult suffrage in Sheikh Abdullah's part of Kashmir comes as no surprise to anyone who knows the country and the people.
>
> ".. She" – India—"contends that the Security Council has no right to interfere in the internal affairs of Kashmir by advocating the proposed 'National Convention' of Sheikh Abdullah's partisans planned for September ; that Indian troops are entitled to remain in Kashmir because it is legally part of India ; ...The Security Council in Indian eyes, is 'wilfully ignorant' or misled by the propaganda of Pakistan or – fantastically—dominated by a sinister 'Anglo-American *bloc*' which is trying to make Kashmir the base for a revived 'imperialism'.
>
> "They miss entirely the simple issue on which India's present differences with the Security Council really hinge. It is of the essence of the undertakings that India gave to the United Nations that the plebiscite shall be impartial

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and that neither side shall do anything to prejudice the free choice of the Kashmir people.

"In the light of this it is irrelevant to argue that Indian troops have a right to be in Kashmir while Pakistan troops have none ; what matters is that the Kashmir people shall be freed from the pressure of both occupying forces. Nor does it matter whether Sheikh Abdullah is entitled to summon a meeting of his supporters and call it a National Convention ; the important point is that if he does this under the aegis of India before the plebiscite is held he will gain a political advantage that will affect the result. Even if the letter of India's past undertakings could be reconciled by legal ingenuity with her present attitude, their whole spirit contradicts it .."

Now, what happened in the elections of 1957 ? In March 1957, elections were again held to the Assembly which was to succeed the Constituent Assembly. During these elections, 40 of 75 seats in the Assembly were secured by the National Conference, without opposition. The pro-Pakistan elements in Kashmir boycotted the elections. Only 8 out of 45 seats for the Kashmir Valley and Ladhkh were contested, with taken opposition. Complaints were voiced in the Indian Press regarding the conduct of these elections in Jammu in which the National Conference candidates were opposed by a Hindu opposition party.

What were the comments ? First, what were the world comments ? *The New York Times* of 8 March 1957 wrote :

"This is not an 'election' in any sense of the word. The term 'election' means a choice. The Kashmir is have had none.

"What happened is no credit to India, no reflection of sentiment among the Kashmiris and no contribution to a solution of this thorny problem."

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The *Manchester Guardian* of 28 March 1957 :

"If it was hoped that the elections in Kashmir might give the Government there a greater appearance of legality, the hope is fading. It does not look as if the elections are to be free. How could they be with Sheikh Abdullah a prisoner ? If only eight of the forty-three seats from the Vale of Kashmir are being contested, the onlooker can draw his own conclusions."

The *Economist* of 6 April 1957 :

"A painful contrast has been visible between India's splendid achievement in holding the biggest general elections in history in an atmosphere of freedom and fair play, and the deplorable way in which the subsequent elections in Indian-held Kashmir were rigged.

"In Kashmir the 'victory' of Mr. Bakshi's candidates was a solemn farce. Before the voting began they had secured forty of seventy-five seats in the local assembly, thanks to the absence or disqualification of rival candidates, and with this safe majority in hand they have been cantering happily through the remaining contests.

"The main opposition group, whose leaders, including the deposed State Premier, Sheikh Abdullah, are still imprisoned without trial, boycotted the elections ; and it was in any case impossible for any candidate who challenged the finality of India's acquisition of Kashmir to stand.

".. Mr. Bakshi's blot in India's copybook is a reminder that the existing state of affairs in Kashmir is also dangerous."

Next is the *Organizer* of 1 April 1957. This is a Hindu paper, issued from New Delhi. The writer certainly was not giving expression to any April Fool's joke, though it sounds like one and, if it had happened on 1 April it certainly would have been one :

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"Just when the counting of the heaps started"—these are the heaps of ballots which had been placed on the tables—"lights went off, as by previous arrangement. It is possible that ballots from one table were snatched and put on another.

"The Praja Parishad, in alliance with Harijan Mandal and Riyasti Akali Dal."—none of these is a Muslim party or organization—"contested all the twenty seats in Jammu against the National Conference, the party of Mr. Bakshi, The officials, from heads of departments to Patwaris (the lowest ranking sides) were working openly for the Government party. The Parishad ballot boxes were, in quite a few stations, placed upside down. When anybody tried to put them straight, the presiding officer shouted : 'Don't tamper with the boxes'."

You could not put your bailot in, because the opening for the ballot was down. If you wanted to put it in, the officer shouted : "Don't tamper with the boxes". The report goes on :

"When voters left their ballot papers on top of the upside-down boxes, the presiding officer put them into National Conference boxes.

"Thousands of bogus votes were cast for the National Conference, particularly after the scheduled closing time of 6 p.m. When Parishad polling agents challenged bogus voters, the presiding officers ignored the objections. Not a single impersonator was arrested."

This is a paper issued in India - a Hindu paper. Pakistan had nothing to do with it.

We come now to the elections of 1962, the ones that have just been concluded. The third elections to the Assembly in Indian-occupied Kashmir were held in March 1962. The Plebiscite Front decided to boycott these elections. The

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Kashmir Political Conference refused to take part in these elections. The result was that thirty-four candidates of the National Conference were declared to have been elected unopposed in the Kashmir Valley and Ladakh, which have forty-five constituencies. This is according to the report of the *Statesman*, New Delhi, of 27 February 1962. For the remaining eleven seats in the Valley the opposition parties, even those which are pro-Indian, decided to boycott the elections. This report is from the *Indian Express*, New Delhi, of 6 March 1962. In two constituencies in the Kashmir Valley, where the National Conference nominees were opposed by independent candidates they were defeated.

Now, what was the press comment ? First, *The Times* of London of 5 February 1962 :

> "Sheikh Abdullah's Plebiscite Front Party has decided to boycott the Kashmir general election on 25 February. The party executive passed a unanimous resolution expressing the view that free and fair elections could not be expected in Kashmir unless political uncertainty was removed by a plebiscite. The resolution said there were no civil liberties in Kashmir. As all important opposition leaders had been gaoled or were on trial, the elections would be a farce.
>
> "The Plebiscite Front did not take part in the general election five years ago or in any subsequent by-election. The Kashmir Political Conference, which advocates accession to Pakistan, is also not taking part in the forthcoming election. The field is thus left clear for political supporters of India."

The *Manchester Guardian* of 16 February 1962 :

> "The coming elections in Jammu and Kashmir will once again provide no test of the popular will. Candidates belonging to the ruling National Conference have been returned unopposed in thirty-three out of seventy-five State Assembly constituencies. Thirty-two of these are

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in the predominantly Moslem Kashmir Valley, with one in Jammu. The position has improved, however, since 1957, when forty seats were not contested. In the whole of India only thirteen other State Assembly seats are uncontested."

That is to say, in the rest of India, out of all the Provincial Assemblies, only thirteen seats were uncontested.

"Opposition politicians allege that Kashmir's surprising figures are due to intimidation and even kidnapping of opposition candidates to prevent them filing their papers. Official sources explain, accoding to a report here, that 'it is not considered odd for candidates in a mountainous terrain to withdraw for want of adequate resources'.

"A political commentator in a leading Indian paper states that the permit-licence-raj is more effective in the Kashmir Valley than elsewhere in eliminating opposition, meaning that those who oppose the governing party get no industrial licence or import permit. He adds : "And there is the peace brigade to deal with recalcitrants'."

The *Statesman* of New Delhi, 3 January 1962 :

"The Chairman of the Praja Socialist Party, Mr. Asoka Mehta, will visit Jammu on 6 January to inaugurate his party's election campaign in Kashmir.

"The State PSP leader, Mr. Balraj Puri, in a statement today, alleged that Bakshi Ghulam Mohammed, addressing a public meeting at Dartral in Poonch district, on Saturday, "threatened to throw across the cease-fire line' anyone who dared to oppose his nominees in the elections." - This was the freedom of the elections—"He added : 'If the Election Commission is not able to persuade Kashmir's rulers to show fair play it should decline to be associated with a mock election to prevent the good name of Indiandemocracy from being tranished'."

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The following is from the *Statesman* of New Delhi, dated 23 March 1962 :

"Mr. Balraj Puri, State Praja Socialist chief, who returned from Srinagar recently, said here today it was unfortunate that his request to the Election Commission to visit Kashmir Valley on the polling day to help avoid the 'repetition of Jammu irregularities', had not been granted.

"Mr. Puri alleged that apart from large-scale impersonation the ruling party had raised linguistic and communal slogans and threatened voters with the cancellation of their ration cards if they voted against party candidates.

"...

"The Democratic National Conference has asked its defeated candidates not to file election petitions.

"In a resolution released to the Press on Tuesday the Democratic National Conference said that the filing of election petitions might have been useful if complaints had been in a few constituencies, but when the whole election 'is false', 'the filing of petitions has become ineffective'.

"Alleging many malpractices it demanded that the election in the State should be declared void and a fresh election ordered."

Here is an editorial in the *Hindustan Times* of 12 February 1962 :

"In an unusually large number of constituencies thirty-two out of forty-three in Kashmir there will be no work for the Election Commissioner. The ruling National Conference party candidates were without a challenge on nomination day... Here in India, even the Prime Minister has to cope with several opponents, though all of them know that they have not the slenderest prospects of success against him. How then in Bakshi Ghulam Mohammed able to achieve this happy state of affairs in

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Kashmir ? It is that the policies of his Government are so universally accepted that we might as well replace in his domain the process of election by a process of acclamation ? ..

"Public confidence in the free and fair nature of the election in Jammu and Kashmir will remain badly shaken unless there is a thorough-going investigation into the charges of malpractice which have been levelled by the opposition against Bakshi Saheb's Government."

I shall now quote from the *Organizer* of New Delhi of 12 March 1962 :

"When immediately following the nomination stage thirty-three candidates of the National Conference were returned to the State Assembly unopposed, misgivings were feebly voiced in sections of the Indian Press that there was something 'fishy at the bottom' about the whole affair. But from what has been brought to light by now after the filling of more than three-fourths of the total number of seats, it can be said that this sordid scandal of Bakshi's regime is smelling not only at the bottom but is stinking all over.

"...

"..we wonder how he can explain that on a day it had been snowing, the five stations of Bhadarwah should have recorded a cent per cent poll, a phenomenal performance which the most enlightened and politically-conscious polling population of the United Kingdom itself envy ! Bhadarwah is no stray example. In almost every constituency where the fight between the National Conference and the Praja Parishad looked a marginal one we invariably find one or two such instances of a 'remarkably high political enlightenment' of 90 to 95 per cent poll !

"...

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"For us the issue is how real is the Election Commission's jurisdiction over the elections in Jammu and Kashmir State ? Does the writ of this august body on which our Constitution has enjoined the sacred duty of preserving democracy in the country run as effectively in Jammu and Kashmir as it does in the rest of India ?

"...

"...The least however that the Election Commissioner must do is to order an immediate probe into the plethora of allegations levelled.

"...

"As in the 1957 elections, ballot papers were given to the officials before the polling began, to be put in the boxes of National Conference candidates in advance."

Then there is the report which appeared in the *Hindustan Times* of 5 April 1962 :

"...The opposition parties are unanimous that their defeat was contrived not by legitimate means, but through open interference by the ruling party.

"...

"The opposition suspicions were further proved correct when on the nomination day, the National Conference secured unopposed thirty-three seats in the valley. The wholesale rejection of opposition papers in these constituencies intrigued many. What went beyond ordinary imagination was the fact that in several constituencies where there were as many as six to seven nomination papers, as for instance in Mendhar, it was the National Conference nominee whose papers alone were found in order.

"The opposition has also rejected the statesment that in

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the constituencies that went unopposed to the National Conference in Kashmir, there were no challengers. They argue that most of the opposition candidates were waylaid and forcibly prevented from attending the courts.

"There are several allegations which only an impartial inquiry can clear up. But that force was used against the opposition candidates cannot be denied since National Conference leaders have themselves claimed credit for having rescued the opposition candidate from Khanyar in Srinagar, who was waylaid and mercilessly beaten near the court premises on the nomination day.

"While the opposition was still recovering from this, there was yet another shock in store for it. This came in the form of revelation of defective ballot boxes.

"...

"Moreover, in the mountainous interior, where besides bad weather the difficulties of terrain would have contributed to the reduction in the over-all size of the polling, the percentage of votes polled could not be as high as 77.3 in Ramban, 77.4 in Kishtwar, 76.9 in Arnas and 70.7 in Bhalesa. According to Parishad sources, in the Kishtwar constituency at several polling booths where snow was as deep as four to five feet, and the voters had to cover long distances to reach the polling booths, the polling figures were shown to have almost touched the 100 per cent mark !

"The opposition also feels baffled that while in most of the hotly contested constituencies in the rest of the country where the voter is more educated and conscious of his rights than in this State, the average poll could not exceed 60 per cent, in Jammu it went up to nearly 80 per cent. In Bishnah it was 84.5, in Ranbirsinghpora 77.6, Miran-Sahib 74.3, Darhal 81.6, Poonch 75.3, Naoshera 61.7 and Samba 73.4."

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Now these elections were held under the authority of the Bakski regime, the National Conference, and with the country occupied heavily by Indian military forces. It might be said, "Oh well, it is occupied by military forces, but the military forces never interfere with the elections". Anybody around this table can imagine what that means. With an Administration wedded to accession to India and a military forces there for the purpose, among others, of keeping up the prestige of this Administration, and when the instances that have been observed, what would be the effect upon the voters? But anyway, here are some statements by Mr. Arthur Lall before the General Assembly on 18 August 1958, as to what a foreign force might mean in countries like Lebanon and Jordan, which I can assure the Council are very different, with respect to the freedom and independence of the population, from Kashmir. This is what Mr. Lall said :

> "...moreover, these forces by their very presence—the presence of massive striking potential—cannot but interfere in the normal political and other forms of expression of the life of the people. I do not have to dilate upon this. It is expecting too much of human beings, even of the brave Arab people, to think they can develop in freedom and in the manner which they would choose for themselves when they stand in the shadow cast by the massive presence of the armed strangers within their gates. And there is another important reason, another important aspect of this matter which must engage our attention. As the Prime Minister of India has said: 'Even if outside forces intervene with sincere and honest designs, they would have to side with one group or another in the country with consequences fraught with grave danger.'
>
> "In our view, the whole situation will continue to be full of danger and will continue to be explosive so long as foreign forces remain on the soil of Lebanon and Jordan. There can be no settlement, and indeed no talk of an acceptable, workable and dignified settlement, and no

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return to normalcy until this element of foreign troops has been removed."

Yet the Prime Minister had promised even as late as 4 June 1951, speaking in Srinagar to the people of Kashmir as reported in the *Hindu* of Madras of 5 June 1951:

> "First of all I would like to remind you of the fateful day of 1947 when I came to Srinagar and gave a solemn assurance that the people of India would stand by Kashmir in her struggle. On that assurance, I shook Sheikh Abdullah's hand before the vast multitude that had gathered there. I want to repeat that the Government of India will stand by that pledge, whatever happens. That pledge itself stated that it is for the people of Kashmir to decide their fate without external interference. That assurance also remains and will continue."

What about these elections ? Are these elections even a shadow of what had been promised to the people ? What were the conditions in Kashmir ? One amusing incident, were it not that it is also so tragic, might be quoted in that connexion from Mr. Josef Korbel's book *Danger in Kashmir*. Mr. Korbel was a member of the Commission, and on pages 148-149 of his book the following incident is reported:

> "...The Commission went from one place to another encircled by the police and accompanied by thousands of wretched people. At one place a meeting was arranged and someone spoke. Groups of people among the crowd responded with 'India, Kashmir, Sheikh Abdullah, Zindabad ! Long live the union between India and Kashmir!' Anyone who had lived in a totalitarian country immediately recognized that the methods of organizing a 'spontaneous' expression of the masses were the same the totalitarian world over.
>
> "At one moment a young man broke the police cordon, threw a paper in front of the Commission, and shouted in

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English, 'I want to tell you that these people oppress us!' The police took him away immediately, but one could still hear him shouting from among the crowd, 'Long live Pakistan!'

"This was a disturbing scene for the Commission, which had been assured that the people enjoyed political freedom in Kashmir. It asked its host, the district commissioner, to send for the man and to bring him before the Commission. A few minutes later a man appeared, but it was quite obviously not the young man who had spoken to us. When this fact was brought to the commissioner's attention, he insisted that it was the same person, but the substitute himself disrupted the attempted deception. 'Yes', he said, 'I am somebody else. My friend is in prison, but it does not matter; I can also tell you that we want to join Pakistan'."

So much for freedom of expression. This is so far as the elections are concerned. In a country where even the administration of justice is controlled by the Administration, where the judges are subordinate to the Administration's behest, how can anyone accept that the elections would be free? I will deal briefly, as an illustration, with Sheikh Abdullah's case. The Council is well aware of the position of Sheikh Abdullah as described by Prime Minister Nehru and by Mr. Ayyangar. He appeared before the Security Council, and the President of the Council this month must remember him very well. He made more than one speech before the Council. He was arrested on 9 August 1953 while still holding the office of Prime Minister of Kashmir and was put in jail. No charge was made against him. The imprisonment was carried out under the Security Act which dispensed with the legal necessity of charging a crime. On 8 January 1958 he was released. On 30 April 1958 he was rearrested. The press note issued by the State Government said that the action was taken because Sheikh Abdullah was "planning subversion and large-scale disorders" and was "a hazard to public security".

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On 23 October 1958 a complaint was filed against Sheikh Abdullah stating that he "conspired to overthrow the Government of Kashmir and to facilitate its annexation by Pakistan". The date of this alleged offence is interesting. It was given as "between 9 August 1953"—the day he was arrested and put in jail—"and 29 April 1958" when after a few weeks at liberty he had been put back in jail.

On 23 October 1958 the complaint was filed and under the procedure now prevailing in India and Pakistan commitment proceedings before a magistrate started. That is to say, the evidence would be recorded and the magistrate would then have to consider whether there was *prima facie* evidence to commit him to trial. This is a preliminary to the trial itself; it is a judicial procedure. That started on 23 October 1958 and went on until 25 January 1962. I repeat, 23 October 1958 to 25 January 1962. He was then committed to the sessions "for trial". He was charged with "conspiracy to overthrow the Jammu and Kashmir Government and to facilitate the wrongful annexation of the territories of Jammu and Kashmir by Pakistan".

Now, one would have expected that once these wearisome proceedings before the committing magistrate were over and all the evidence produced against him was on record, the case would be sent to the session court, whereupon the latter would immediately start a trial. That happened on 23 January, but on 16 April the sessions judge to whom the case had been committed transferred it to another court. The trial has not yet begun. The complaint was filed on 23 October 1958 and the trial has not yet begun up to today, unless it has begun during the last few days. Of this we have no knowledge and I do not believe that it has yet begun, on 2 May 1962.

The charge against him before the sessions court, as stated by the special magistrate is this: he was charged under sections 121 A of the State Penal Code and 120 B, read with rule 32 of the State Security Rules, for having conspired to overthrow the State Government by criminal force and facilitating the

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wrongful annexation of the State of Jammu and Kashmir by Pakistan. He was further charged with creating among the people hate, contempt and disaffection against the State Government, creating communal ill-feeling and disharmony and disturbing peace and tranquillity. If creating hatred, contempt and disaffection against the Government were an offence here, half the population of the United States would be in jail. The magistrate added that he and his co-defendants had also been charged with committing other prejudicial acts, with the assistance of Pakistan, between 9 August 1953 and 29 April 1958 in collaboration with nine absconding accused.

I shall not press the matter further; we are not trying Sheikh Abdullah here but where the administration of justice has that political complexion that if they do not like a man—so far as they are concerned, let us say with good reason—this is the treatment to which he is subjected. They claim that the people have freely expressed their wishes with regard to accession and the matter is closed.

Now I come to another matter, and I will deal with it briefly. It has sometimes been said, "We cannot accept Pakistan as an equal party in this dispute. As a matter of fact, Pakistan is not a party to the question of accession at all." What would be the position of India in a case where the ruler, belonging to one community with the majority of the people belonging to another community, acceded to a Dominion the majority of whose people were of the same community as the ruler and not to the Dominion the majority of whose people were of the same community as the majority of people? This is the case in Kashmir; and they say that the only Government concerned is the Government to which the ruler acceded, that the other Government has nothing to do with it.

But this is not what they said in a reverse case, the case of Junagadh which I mentioned at the previous meeting, where the Muslim ruler acceded to Pakistan, the majority of his subjects being Hindus. Now, what was the position of India

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with regard to that? Who was concerned? Which were the Governments concerned? According to them, the only Governments concerned were the Governments of India and of Junagadh. In regard to Kashmir, they say the only Governments concerned are those of India and of Kashmir. On the other hand, this is what they said with regard to Junagadh, in a telegram from the Governor-General of India to the Governor-General of Pakistan, dated 22 September 1947:

> "The Pakistan Government have neither acknowledged receipt of our message nor replied to this or our previous dispatches on the subject. Instead the Pakistan Government have unilaterally proceeded to action which, it was made plain the Government of India could never and does not acquiesce in. Such acceptance of accession by Pakistan cannot but be regarded by the Government of India as an encroachment on India's sovereignty and territory and is inconsistent with the friendly relations that should exist between the two Dominions. This action of Pakistan is considered by the Government of India to be a clear attempt to cause disruption in the integrity of India by extending the influence and boundaries of the Dominion of Pakistan, in utter violation of the principles on which partition was agreed upon and effected. In these circumstances, I hope that it will be possible for you to prevail upon the Government of Pakistan to reconsider their attitude as regards the accession of Junagadh; but if the matter is not reconsidered, the responsibility for the consequences must, I am compelled to inform you, rest squarely on the shoulders of the Pakistan Government."—That was Lord Mountbatten speaking.—"The Government of India are, however, still prepared to accept the verdict of the people of Junagadh, in the matter of accession, the plebiscite being carried out under the joint supervision of the Government of India"—and here one would expect "and the Pakistan Government"; but no, it is—"India and the Government of Junagadh."

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Pakistan has nothing to do with it. The State to which accession was made, therefore, and the reason why this accession was accepted, would have nothing to do with it. On this very basis, it could be said that India has nothing to do with the question of accession, with the question of the plebiscite in Kashmir.

It is argued too, on the other side, that Pakistan is no party. Pakistan is no party? Look at the agenda which the Security Council approved only today: "The India-Pakistan question". Look at the resolutions of the Security Council: "The dispute between India and Pakistan", "The situation between India and Pakistan". Look at the resolutions of the Council; even with regard to the plebiscite they have said: "by the Government of India and the Government of Pakistan". And now it is beginning to be said—it has been said over the last few years in fact—that Pakistan is not really a party to this. It is only, I suppose, out of charity that we are even permitted to speak on this question.

But the Pakistan *locus standi* with regard to the disposition of this State has been recognized from the very first ; otherwise why all this series of messages to us, assurances to us, pledges to the Government of Pakistan with regard to the disposition of this State : "This is not merely a promise to your Government but also to the people of Kashmir and to the world" ? Here is a telegram dated 31 October 1947, addressed to the Prime Minister of Pakistan by the Pr.me Minister of India :

> "Our assurance that we shall withdraw our troops from Kashmir as soon as peace and order are restored and leave the decision regarding the future of the State to the people of the State is not merely a promise to your Government but also to the people of Kashmir and to the world."

And how it is said : Pakistan has no *locus standi*. What *locus standi* has Pakistan in this matter ?

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Then there was a statement by Mr. Ayyangar in the Security Counell on 3 February 1948 :

> ".....both Pakistan and India have interests in the question of accession, and therefore some agreement has to be reached between them." [239th meeting, p. 330.]

Is there no *locus standi* ? Are we not a party ?

Earlier at the same meeting Mr. Ayyangar said this :

> "Before I proceed I might say that, part from the stoppage of fighting the two parties interested in the Jammu and Kashmir question—each for its own reason—are the insurgents, who want responsible government, and Pakistan, which wants the question of accession to be finally settled. As far as the insurgents are concerned, I have indicated what the Maharajah is prepared to have announced in his name as his decision. As the Security Council is aware, the Government of India is fully committed to the view that, after peace is restored and all people belonging to the State have returned there, a free plebiscite should be taken and the people should decide whether they wish to remain with India, to go over to Pakistan or to remain independent, if they choose to do so." [*Ibid.*, pp. 328-329.]

So the parties before the Security Council certainly are India and Pakistan. But we agree—not only do we agree ; we lay emphasis on the fact—that the crux of the matter is the right of the people of Kashmir to decide freely and, in the words of the Prime Minister or India already quoted by me, "without any external interference" whether they wish to accede to Pakistan or to India. The behaviour or the misbehaviour of India or Pakistan, though it may call for correction of the situation, cannot operate to deprive the people of Kashmir of their right to make their free choice on the question of accession.

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I hope I have said it properly in the Security Council, that this question of accession, this question of aggression and this question of sovereignty were all taken into account by the Commission, and it was after all of them had been raised, and repeatedly raised, before the Commission that the two resolutions were formulated and were accepted by the two Governments. I have already shown that they are today really not relevant to the implementation of these resolutions at all. But assuming only for the sake of argument, but not conceding, that these questions have to be determined, as the representative of India keeps on insisting each time, how then can they be determined ?

Accession, aggression, the determination of the parties' obligations and of any default committed in carrying them out, the passage of time—all of the questions that have been raised are susceptible of determination. Most of them are questions of law, some of them are questions of fact. One method of resolving a dispute of that character, involving questions of law and questions of fact, would be through arbitration. Efforts have been made to try to persuade India to have them decided through arbitration, and arbitration of the then—existing differences on the interpretation of part II of the Commission's resolution of 13 August 1948 was suggested. This was endorsed by an appeal by the President of the United States, Mr. Truman and the Prime Minister of the United Kingdom, Mr. Atlee, to the Prime Ministers of both India and Pakistan. Pakistan accepted this method of settling the differences—the reference is to the Commission's memorandum of 27 August 1948—but India rejected it. India rejected it on the ground, I think it was stated, that they could not commit the fate of 4 million people to arbitration. But nobody had suggested this : nobody had suggested that the question of accession to Pakistan or to India should be submitted to arbitration. Nobody is suggesting it today. What was suggested was the question of what those paragraphs of the resolution mean ; what are the obligations of the parties ? What has each to do ? And these are questions which are susceptible of determination through arbitration or through judicial settlement. That was all that was suggested.

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But then it was also said : "But this would infringe upon our sovereignty". But there have been scores—I shall say that if one looked into it, perhaps hundreds—of cases of international arbitration between sovereign States, where both parties were sovereign States, where there were disputes and they were settled through arbitration. One reference will suffice. I will read out article 51 of the Indian Constitution itself. This article states :

> The State shall endeavour to—
>
> "(*a*) Promote international peace and security ;
>
> "(*b*) Maintain just and honourable relations between nations ;
>
> "(*c*) Foster respect for international law and treaty obligations in the dealings of organized peoples with one another ; and
>
> "(*d*) Encourage settlement of international disputes by arbitrations."

Not only is it not contrary to sovereignty, it is one of the directives of State policy in the Constitution of India.

Operative paragraphs 5 and 6 of the Security Council resolution of 30 March 1951 suggested arbitration. The text reads as follows :

> "*The Securiry Council*,
>
> "……
>
> "*Instructs* the United Nations Representative to report to the Security Council within three months from the date of his arrival on the sub-continent ; if, at the time of this report, he has not effected demilitarization in accordance with paragraph 3 above, or obtained the agreement of the parties to a plan for effecting such demilitarization, the United Nations Representative shall report to the Security

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Council those points of difference between the parties in regard to the interpretation of the agreed resolutions of 13 August 1948 and 5 January 1949, which he considers must be resolved to enable such demilitarization to be carried out ;

"*Calls upon* the parties, in the event of their discussions with the United Nations Representative failing in his opinion to result in full agreement, to accept arbitration upon all outstanding points of difference reported by the United Nations Representative in accordance with paragroph 5 above, such arbitration to be carried out by an arbitrator, or a panel of arbitrators, to be appointed by the President of the International Court of Justice after consultation with the parties".

That was in 1951. I might say, incidentally, that I was not then on the Court. The "fanatic", according to the Defence Minister of India, was not yet a member of the Court.

India rejected it, Pakistan accepted it. Then in April 1957, Mr. Gunnar Jarring's proposal was that the lack of implementation of Pakistan alleged by India might be determined by somebody, and that what needed to be done to reactify any alleged defaults that might be discovered might also be determined. That was accepted by Pakistan. The party that is charged with the default is eager to accept some method of determination. The party that charges default will not accept determination. Mr. Jarring's proposal was rejected by India.

Prime Minister Nehru's latest statement on arbitration in theory is hopeful and let a hope something might be built on that. It is reported in *The New York Times* of 22 March 1962 :

"On the question of arbitration of the border dispute with Communist China, Mr. Nehru said : 'If the circum stances are proper both parties agree and suitable arbitrators are found, I will not rule it out'.

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"Asked if this also held true for Kashmir, Mr. Nehru replied, 'In theory it applies to every place'."

That raises some hope.

The whole question was last considered by the Security Council on 2 December 1957 [808th meeting] when it adopted the resolution of that date. Out of consideration for time, I will not read out to the Council the actual words of that resolution but I hope that the members will check it up and will read it as part of my submission to them.

In pursuance of this resolution, the United Nations Representative made a report dated 28 March 1958. That report still awaits the consideration of the Council. The recommendations made by the United Nations Representative in paragraph 20 of that report were accepted by the Government of Pakistan as set out in that section, were rejected by the Government of India.

In the first instance it would be most proper and fitting that the United Nations Representative, who has laboured so hard to carry out the directives of the Security Council and to secure an arrangement between the parties through the implementation of the resolutions of the United Nations Commission for India and Pakistan so that a settlement might be reached, as laid down by the Security Council, through the democratic method of a fair and impartial plebiscite, should be requested by the Council to introduce his report formally and make such comments and observations as he might consider necessary or desirable, more particularly having regard to the period of over four years which has elapsed since the date of his report. Thereafter, one way of proceeding would be to start with the recommendations made by the United Nations Representative in paragraph 20 of his report. That would necessarily involve the consideration and examination of the reasons given by the Government of India for its refusal to accept the recommendations.

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Surely it should be beyond the resources of the Security Council to devise a method acceptable to the parties for such examination and consideration, which might ultimately lead to the recommendations of the United Nations Representative or some reasonable and mutually accepted variation thereof, as the basis for further progress. We urge very earnestly and strongly that such an effort be undertaken. Should this effort fail, it would be necessary for the Security Council to consider how progress can be made. I respectfully urge the adoption for this purpose—that is to say, the consideration of how progress might be made—of a procedure that was normal in the earlier stages of the consideration of the case by the Security Council. I will here quote Mr. Warren Austin's advice to the parties with regard to the procedure. Mr. Austin stated :

> "It seems to me, in determining whether there is a situation which, if it were to continue, might lead to a dispute or to war, that we have before us an opportunity to make progress in the right direction, through the continution of the entirely friendly and informal conference under the guidance of the President of the Security Council. My country thinks that these conference should be continued in the real spirit that animates India and Pakistan here, and that they should not be interfered with here by the necessary presentation of charges, countercharges, claims and so on that have to go into the record." [235th meeting p. 261.]

I would respectfully submit that speeches in a public sitting of the Security Council, though necessary and useful for many purposes, cannot by themselves bring about a meeting of minds. As a matter of fact, they often lead to a drawing apart of minds. If the members of the Security Council were to desire the President to get in touch with the parties with a view to making an effort to bridge the differences between them, that might show a way out.

Pakistan is quite agreeable to any method that may be suggested for determining; (a) the obligations of the parties

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under the UNCIP resolutions; (*b*) what is holding up progress on their implementation; (*c*) whether either of the parties is in default with regard to the fulfilment of its obligations (*d*) what needs to be done by either side to move the matter forward towards implementation.

If a determination of (*c*) above, that is to say, whether either of the parties is in default with regard to the fulfilment of its obligations, should disclose that Pakistan is in default in any of these respects, the default would be rectified through the speediest method at the earliest possible moment, so that the way may be opened toward full implementation of the resolutions. This is an undertaking that I submit to the Security Council on behalf of the Pakistan Government. I do trust and hope that India would be prepared to agree to the same, that is to say, in the event that a fair and impartial determination, upon the method of which agreement might be reached, should lead to the conclusion that Pakistan is in default with regard to A, B and C and that India is in default with regard to X, Y and Z, both Governments—and I have given an assurance on behalf of my Government—will, in the shortest possible period and in the speediest possible manner, rectify those defaults.

Now how could the determination take place? The United Nations Representative is available for making this determination. Nobody could be in a better position, as he has made a detailed study of the whole problem and knows it from A to Z. Pakistan would, however, be quite agreeable to any recognized international figure of undoubted integrity carrying out the task. If India should have any hesitation in accepting a personality from among the great Powers or from among any particular group of States, Pakistan would be agreeable to the selection being made from any region or group that would be acceptable to India - for instance, from Asia or Africa.

"Wa akhiro dawana anil hamdu lil lahi rabbil Alamin"—"And the close of our cry will be: praise be to God, the cherisher and sustainer of the worlds."

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Mr. Krishna MENON (India): We have heard a long statement by the representative of Pakistan. In normal circumstances my delegation would have been prepared to answer it tomorrow. However, a great part of the statement was not quite audible. While the bulk of it deals with matter that have been before this Council for many years and have been answered in full, out of the courtesy to the new members, and because certain alleged facts have been set out, we shall answer it in full. It would be fair to us and to the Council that I should read the text of the statement of the representative of Pakistan overnight, but it will not available before tomorrow and therefore, if it is agreeable to the Council, we should like to answer tomorrow afternoon.

I should like to submit also that, while the matter is of great importance, this meeting has not been called on our initiative. The date was fixed after a long period of negotiation, and it is not possible for the Government of India to make available the services of a representative whom it considers suitable for a much longer time than was originally intended. I have other responsibilities, and I therefore have to leave the country on Friday evening. Therefore, I would make a submission tomorrow afternoon and do my best to confine it to one meeting, if the Council would allow me the liberty of drawing attention the various paragraphs of previous statements in which all these statements have been fully answered. To those who are hearing the discussion for the first time, it might appear as if there were no answer to these questions, Therefore we shall try to adopt a method which may be more rational than a mere repetition.

If the Council could meet punctually at three o'clock it might be possible to finish it tomorrow afternon as far as we are concerned.

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184. *Text of the speech made by Mr. Krishna Menon (India) in the Security Council meeting No. 1009 held on 3 May 1962.*

Yesterday afternoon [1008th meeting], when Sir Muhammad Zafrulla Khan began his observations, he referred to the time table of these meetings. We have nothing in the way of complaint to make, but it is my duty—and a compelling one—to make the position of myself and of the Government of India clear in this matter.

We are met here at the request of the Government of Pakistan. We have taken no initiative in calling this meeting. The request was made sometime ago: a considerable amount of negotiation or exchange of opinions with various people took place, and ultimately this date was decided upon. I regret I was not here at the earlier meetings when Sir Muhammad spoke, and I convey to him that it was not by way of discourtesy, but because my commitments in my own country do not permit me to leave India for more than a few days. I am in the position that I have to return tomorrow evening. But so far as we are concerned, we shall try to make all our observations this afternoon in reply to Sir Muhammad's statement and also in regard to the newer facts which have not been adduced in his speech but which are taking place in India currently in connexion with this problem. We are prepared to sit into all hours of the night, if necessary, but so far as my delegation is concerned it will be impossible for us to participate in this debate after tomorrow. This is in no way a discourtesy to the Council, because the meeting was fixed for a particular day, and it is assumed that when Governments are represented from such distant places, those proceedings will be continuous, for none of us can forsake his duties at home in order to participate in proceedings over here. My Government is anxious to assist the Council, to assist itself and indeed the Government of Pakistan, to have a view of this problem as it is.

Now, having said this, I proceed to the subject-matter.

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We are met here as a result of a letter dated 11 January 1962 [S/5058], sent by the Permanent Representative of Pakistan to the President of the Security Council in which it is pointed out that the efforts for a "just and amicable settlement of the dispute, have failed to open a way towards such settlement". I suppose this means that the Pakistan Government has come to the conclusion that there was nothing to be gained by what they called "direct negotiations". If by negotiations you mean exchange of views, the Government of India is always open to this. But ever since 1949 we have said that there cannot be negotiations on the substance of sovereignty.

But their letter would indicate that the Pakistan Government had come to the conclusions that there was then, no use, taking any other step than coming to the Security Council once again, and this is reinforced by the fact that my Government, my Prime Minister, invited the President of Pakistan to come to Delhi. The Security Council meeting was asked for and precipitated while these exchanges were going on. Naturally my Prime Minister replied to say that we cannot have this argued in two places: either you talk to us or you talk to the Security Council. These passages here indicate to those people of good-will who are constantly talking to us outside about bilateral and trilateral negotiations and so on, that the Pakistan Government has in the initial stage ruled that out.

Then comes the second part of the letter which states: "Recent pronouncements by responsible personalities in India have emphasized that the situation is charged with the utmost gravity". If there is gravity in the situation, the charging has been done by the Government of Pakistan, not by us. The very fact that the Council was called and as still going on in this lackadaisical manner and that there had been no great urgency is an indication that there is no grave urgency or crisis in relation to this. We repeatedly informed this Council—and you, Mr. President, are familiar with this problem intimately—that we will take no initiative in the way of the use of force or of altering the situation in such a way as to disturb the peace of our continent or of the world. The Government of India

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has always made the commitment that, however correct its position may be legally, morally, politically and Charter-wise, it is the prepared to alter that, even in the interests of justice, by the use of force. That is still our position.

Then the letter goes on to say that the Defence Minister of India said,".. we have not abjured, violence in regard to any country who violates our interests". This is not a very correct quotation, but I do not want to quarrel with the words. This statement was made to the Fourth Committee of the General Assembly in connexion with our position on colonialism, that if any part of our country became a victim of aggression, then there was a general feeling here that—the American newspapers call it the "image of India" but we did not create that—we would in no circumstances use force. This is not a sensible view to take because India has an army, an air force and a navy, maintained at considerable cost to the taxpayer and perhaps to a certain extent—but only to a limited extent—through the retardation of our economic development. Therefore, as a State we are not a pacifist State. And if we spoke truthfully, that is no crime. When we said that we have not abjured the use of violence, that is because we have troubles on our frontiers. Pakistan itself knows that when it has probed our frontiers more than our patience would bear, we have tried to teach it salutary lessons now and then. But that is what the statement means.

The letter goes on to say that the statements made by us constitute "a grave threat to the maintenance of peace in that region". No country, either in the world or in our region, has contributed more to the lowering of tensions and the maintenance of peace in South-East Asia, and even those who are not politically in full agreement with us would be willing to admit it at least in private. The letter further states that the Pakistan Government "feels that the Security Council should be made cognizant of the situation at the earliest opportunity".

I have been at great pains, although I was not here on the first day, to read every line of what Sir Muhammad Zafrulla Khan said, and also to listen to the speech he made as far as it

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could be heard yesterday and read it over last night. I have not seen in these statements that anything new has been communicated to the Council or that any proposals for a speedy settlement of the dispute based on the principles of the Charter or in regard to the history of this matter have been put forward. It would be easy for me simply to have an index of the previous statements made before the Council in 1957 circulated—this I have done informally—in order to place before the Council members the key to the text of the Security Council proceedings on the statements submitted by the Government of India because, having gone through several pages, I feel it would not be fair to expect that those who are not intimately connected with the problem will be very familiar with every aspect of it. While we have no desire to introduce this as a Security Council document, we should like it to be made available for the information of the Council so that it may enable me to abbreviate the statements I am making. It is not necessary to read all the quotations, all the statements, and one could skip over a certain number of things.

What has happened? One further fact; we meet, and I hope no one will discount this, and proposals are being made; we meet in the shadow of a threat made by the representative of Pakistan in this Council. Here is what he said:

> "If the Security Council does not want the elements in the State who started the liberation battle to start it again, if the Security Council does not desire that the tribesmen should get out of hand and pour into Kashmir again, if the Security Council does not desire that the people of Pakistan should get out of hand and—if I may mix the metaphor—take the bit between their teeth and run away with the whole system of ordered government, and if the Security Council does not desire that powerful neighbouring States should plunge into the vortex" the vortex of war, I suppose he means—"when it starts again, the Security Council had better take note of the realities of the situation." [1007th meeting, para. 63.]

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It is not for me to comment on this statement in so far as it is addressed to us. My Prime Minister has replied yesterday by saying that this argument by threats is not going to have the slightest effect on any decisions we are going to take, and no one knows it better than the Government of Pakistan.

Then it has been said that we have made certain offers in regard to this. At various times we have suggested ways and means by which tensions could be lowered. We have at various times made suggestions on this problem, as it is called, although Kashmir is not a problem but an integral part of India, and you do not call your country "a problem"; and the other day the Prime Minister said that we could negotiate even without any previous changes being made before hand, and that has been taken as though it were an offer of some kind. The Prime Minister said the other day that various suggestions had been made in the course of the previous few years about the solution of the problem, and among them was one that the basis of talks should be the existing position so as to here some reality about the talks. What Pakistan had been doing was something unrelated to the present position. He said that since the President of Pakistan had rejected that basis the question did not arise of using it again. Therefore, just because someone makes sometimes a reasonable proposition or suggests a way of meeting someone somewhere, which is rejected so that nothing happens, you do not start from there again. Otherwise it would not be possible to think aloud.

This really means that when we left the Security Council in 1957 we left it in the position that what was to happen was that Pakistan must vacate its aggression. We have two aggressors in Jammu and Kashmir—Pakistan and China. Some of you may have different feelings about the two countries, but as far as their position in Jammu and Kashmir is concerned, they are identical. And, as I shall show later on, they are not only identical but they seem sometimes to play with each other in order to embarrass us.

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Therefore, what we said in 1957 was that the aggression must be vacated. Aggression has been established by the United Nations Commission for India and Pakistan; aggression is a fact which can be noticed any day; aggression is proved by the fact, again, that Pakistan has illegally annexed this territory under the terms of its Constitution; aggression is also established by the fact that there has been considerable augmentation of troops—without the knowledge of the Security Council in the first instance and afterwards, not with its connivance, but within the purview of its knowledge of what has been taking place in Pakistan. That is by way of introduction. Now I proceed to deal with this matter.

As I said a while ago, there is nothing new in these statements. They are reiterations of what we would call misstatements, or statements with paragraphs taken out of their contexts, and so on. Thus I think that you, Mr. President, as an old member of the Council, will perhaps turn round and say, "Then why waste time? Cannot we go on?" Unfortunately, it so happens that the Security Council has new members, and, what is more, you have permitted these statements to be made—or, rather, these statements have been made—and they have to be met in part. As I said just now, we shall try as far as possible to avoid repetition, especially because, in the course of Sir Muhammad's six hours of speaking, there was no proof of any threats. There was no proof of anything whatsoever except the threat made by the representative of Pakistan himself, and if there are any changes in the conditions that exist they will be the changes to which I shall draw attention in the latter part of my observations—changes which will be substantiated by the facts as they exist today.

In the course of the statement made by the representative of Pakistan very little, if any, reference was made to the proceedings before the Security Council since 1953 or thereabout; that is to say, the more recent proceedings were totally ignored. The Government of India has no right to expect that another country will either ignore or take cognizance of this, that or the other; but the fact does remain

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that in 1957, in the two long sittings which we had, the Government of India made its position clear, correcting large numbers of misstatements that had cropped up; and that when Mr. Gunnar Jarring came back from India and Pakistan, the main part of his report was concerned with drawing the attention of the Security Council to the fact that conditions had changed not only as regards India and Pakistan but as regards the political and power relations in South-East Asia itself. Therefore, whatever UNCIP might have said with regard to the implementation of the first part of the resolution of 13 August 1948 in the early half of 1949, those conditions had long ceased to exist, because that was written when the Security Council was not being taken into confidence by the Government of Pakistan in relation to aggression or to the participation of Pakistan armed forces or other matters which the Commission discovered afterwards.

So we regret that no notice has been taken of those matters because perhaps, if it had been taken, Sir Muhammad—with his very considerable experience of the judiciary in India and afterwards of political affairs, and more recently of the highest judicial tribunal in the world, the International Court of Justice – would have been more objective. As I have said, no threats of this kind have been proved.

In this statement there is a reference to a liberation movement which will start all over again, and that liberation movement comes into play in the remainder of the speech also. My plan, in submitting my observations, is to deal with any new points—if I can find any—in this statement, and give the Council as brief answers as possible to the repetition of the allegations and arguments of previous times, to give cross references to the more elaborate statement made in 1957, which forms part of the proceedings of the Council, and refer to what we call the changed conditions and the concepts that obtain in the continent, the new perspective that exists today on the roof of India in the Himalayan region with the intrusion of China into our territory, and also to deal with the findings on behalf of the Security Council itself in the Jarring report.

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Coming to the text of his statement, if one may so call it, the thesis seems to be that there was a liberation movement in Kashmir. That liberation movement was sought to be suppressed by the Maharajah, and those who went in afterwards in the form of raiders, and ultimately the Pakistan Army, were those who were supporting the liberation movement. Particularly with the large number of States here who have either achieved their liberty through liberation processes or who are interested—as we are all interested as Members of the United Nations—in national freedoms, this is a word with which much play can be made. It is quite true that there was a liberation movement in Kashmir. Neither Pakistan nor its predecessor, the Moslem League in India, had had anything to do with it. What is more, they have been opposed to it. And I shall quote from Mr. Jinnah to show that he was opposed to it at the time. This liberation movement, this nationalist movement, really started as a Moslem movement: afterwards it became a nationalist movement. That nationalist movement tried to bring an end to the feudal regime inside Kashmir before Indian independence. It sought no assistance from the tribesmen or from Pakistan, or even from the rest of India, except in the way of general political affiliations.

Therefore, when we speak about the liberation movement in Kashmir, to us it means one thing. I do not know what it means to Sir Muhammad, but from the way it is presented it apparently must mean something else. The liberation movement in Kashmir was the "Quit Kashmir" movement and was parallel to the "Quit India" movement in the rest of India itself. When Ghandi started the "Quit India" movement on 8 August 1940 that was notice to the Empire to go—that is to say, direct action against all the works of the Empire, as such, and large-scale resistance. A parallel movement grew up in Kashmir called the "Quit Kashmir" movement, meaning thereby the removal of the Empire from Kashmir. It was not particularly aimed at the institutional monarch or princedom but was part of a national liberation in India. This was opposed by the Moslem League, which was the precursor of Pakistan. It is

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difficult for some of you gentlemen, without a background and knowledge of Indian development, to understand this.

Then, the next argument is that this liberation movement was sought to be suppressed by the Maharajah who, according to *The Times* of London, which is always very accurate in counting people, has somehow assessed that 237,000 people—not 236,000 but 237,000 people—were killed in Kashmir. That is neither historical nor factual. In the Second World War only 400,000 were killed. But this fantastic report was put out. There was no such mass killing or anything of that character. It is quite true that the Maharajah was not in favour of the national movement; which Maharajah is? The British Maharajah was not in favour of the national movement. So the British Maharajah put all our people in prison. But the British have a habit—my friend, Mr. Boland, who is opposite here can confirm this—to consider the prisoners of today the friends of tomorrow. They negotiate with them and what is more, even when they are in prison, it is conveniently arranged for them to get together for consultations and things of that kind. All Maharajahs put people in prison in that way. And this "Quit Kashmir" movement, which was a real nationalist movement and had nothing to do with Pakistan or tribal holdings in the country, was put down.

Having said that, I would like to draw the attention of the Council to a very small account of the history of Kashmir. When I say "history", nobody need be alarmed. I am not going to bring out books. But all these things are part of the background. This is not a case of a no-man's-land somewhere, some country which one of these great Powers found somewhere and where a flag was put up or something of that kind: it is not a case of a no-man's-land being snatched it by two people. That is not the position. Kashmir had always been a part of India, whether under what in Europe would be called prehistoric days or later on. Kashmir has a long history since the foundation of its capital, Srinagar, Srinagar was founded by Emperor Asoka in the third century B.C., that is to say, it was part of the Buddhist hegemony at that time. There were many

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Kings – Hindus, Buddhists, Moslems, Sikhs and Afghans – but it was always a part of the mainland of India. After Asoka's empire dwindled away—the valley of Srinagar, was part of the Kushan Empire of the first century B.C.—a Buddhist council was held in Srinagar. King Harsha, in the years 1089 to 1101, had a lord of the gate appointed to look after Kashmir. That was a sort of viceroy. Kashmir was one of the provinces of the Empire of the Great Moguls afterwards.

During the decline of the Mogul Empire, Kashmir and Gilgit which was part of the Maharajah's suzerainty and which has now been absorbed by Pakistan illegally, came under the rule of the Sikh ruler Rajit Singh, who was then fighting the Moslems, while Jammu and Ladakh and Baltistan were ruled by Gulab Singh, whose name you have heard and whom Sir Muhammad conveniently interchanged with Sir Hari Singh on many occasions.

In 1846, as a result of the Anglo-Sikh War, Kashmir and Gilgit were ceded to the British, who, in turn, granted it to Gulab Singh for a consideration. That is where modern Kashmir begins. By the Treaty of Lahore these places went to the British; the British transferred them to Gulab Singh and the hegemony of Kashmir and all those territories under the suzerainty of the Maharajah begin from that time. Gulab Singh entered into a treaty with the British, acknowledging the supremacy of the British Government and thus subjecting his sovereignty to the suzerainty or paramountcy of the Crown.

The authority of the paramount power of the States extended *inter alia* to a field of defence in external affairs and, in certain aspects, in internal affairs; that is to say, none of these princely States were independent in the international sense. There were a few territories under the British Crown which exercised this authority, not by the power of the United Kingdom or by the power of Britain, but by the fact that Britain was the ruling authority in what was them called British India.

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However, the rights and obligations of the paramount power were not created or sustained by treaties alone. They existed independently of such treaties, overriding them to a great extent, I want to make this point because the matter has been raised time and again that when the British went away, they said, "Our obligations to the princes are over." They could not do anything else because they could not carry out those obligations. This was so because while those obligations rested in the British Crown, the strength for carrying out those obligations came by the fact of the Government of India.

In other words, paramountcy has two aspects. Paramountcy has a kind of notional aspects in the same way as the leadership of a State rests in the Crown. I do not know whether Sir Patrick Dean will agree with this or not, but the British Crown today is a many-headed one. The crown of South Africa is not the same as the crown of Australia; we have no crown as the moment so we will not go into that. But the British Crown is not a monolithic crown. In the Kingdom of Canada or shall I say the Queendom of Canada, they are all different heads of independent States. The British Crown, it is quite true, in the person of the monarch, entered into friendly treaties with the princes of the time. That is what they were called. But actually they were either conquered or whatever it may have been—I will not analyse it. But the British Crown could not function in relation to a prince in India except by means of the revenues or the armies of the administration of India, functioning through the Political Department.

And so, what happened? When the British left, the Crown remained for one more year. India being a Dominion, its King was the King of India but the Crown decided, under advice into the history of which we will not go, to tell the princes, "We cannot protect you any more. You cannot exercise any rights." This is very important. Because the reference is only to rights. What the Crown said at that time was that the States could not exercise any more rights against the British Crown. Nothing was said about the obligations of the States. They could not exercise any rights against the British Crown because the British

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Crown was in a difficult position because if, after the British left, one of these States had got into a conflict either in Pakistan or India, they would have been involved. For that reason, they kept out.

Under the terms of the Government of India Act 1935, to which India and Pakistan are equal partners, the India of today is a succession State of Britain. Pakistan is not. It is a State carved out of parts of India that did not want to remain with the rest, by agreement. It is a new State, admitted to the United Nations as a new member. We were not admitted as a new State; we were here. We have taken on all the obligations, the assets and the liabilities of the British Government. We have a succession State, whether it be as a result of the Japanese Treaty or anything else. We were a succession State and, as such, inherited the functions of paramountcy. This is to say, irrespective of the absence of the Crown, those things that were done by British India at that time had to be done by others as well. But the Treaty certainly was between the prince and the Crown.

The British Government succeeded to the paramount power over India, which was possessed *de jure* and *de facto* by the Mogul Emperor and acquired *de facto* by the East India Company and finally assumed by the East India Company *de jure* by the disappearance of the Emperor. The Crown was now in India what the Emperor had been, a completely sovereign power, predominant over all others and claiming allegiance.

The tone adopted by Canning is explicable only if one understands that the Crown had succeeded to the whole authority of the Empire in so far as it chose to exert it, and the Crown, unlike the Emperor, had means fully adequate to make active use of its powers. The Crown at that time had means fully adequate, but it lost British India, that is, once it ceased to be a Government of India—the same person was Governor-General and Viceroy; once he was merely the Governor-

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General, not the Viceroy—the Viceroy had no longer any implementary powers.

It is thus an established fact that the British Crown itself did not acquire paramountcy rights this is the point I want to make—by an express grant, cession or transfer. In this context a declaration issued by the Crown terminating its relationship with the States could determine only Crown's own future relationship with the States. It could not have the effect of divesting the succession Government of its status vis-a-vis the States and its rights and obligations in relation to them inhering in the supreme power in India.

I say all this not in order to raise a legal problem. But, judging by the way things are spoken about, as I said, it would look as though this is some island in some unknown sea and that we are both quarrelling about it. We are dealing with an integral part of India, historically—not only in ancient times but in the continuance of the transfer of power—this is one of those things which it is very difficult for those who have not been acquainted with the British system of government to appreciate and understand.

With the coming into force of the Indian Independence Act on 15 August 1947, the suzerainty of His Majesty over the Indian States lapsed. We admit that Suzerainty is nothing unless it is exercised - but the fundamentals on which it rested remained. The essential difference in the security requirements of the country and the compulsions of geography did not cease to be operative with the end of British rule in India. If anything, in the context of world events, they have become more imperative. The Central Government of India, which succeeded the British, was unquestionably the paramount power in India. And here, if I may interpolate, if we abdicated or resigned from this position, both we and Britain would be in a difficult way, because we took over a considerable amount of liabilities in the same way as we took over the assets. Unquestionably the paramount power of India, both *de facto* and *de jure*, the Government alone was the only competent independent sovereign

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in India, that is, the *de jure* sovereign Government in British India.

There was a special responsibility on the part of this Government to protect all the territories in India from external aggression. The withdrawal of the Crown makes no difference. That is why the Maharajah of Kashmir appealed to the Viceroy, to the Governor-General, because it is the duty of the British Government to go to their protection from external aggression. It was not the Viceroy's business to go there to protect his subjects against a feudal ruler. And that was why there was no interference in British India in regard to the "Quit Kashmir" movement. But when foreign invaders came in, and when information was received by the Maharajah in that way, on the one hand he protested to Pakistan, and on the other hand he appealed to the Prime Minister of Britain, and it was the duty of the Government of India therefore to protect all territories in India from external aggression and preserve peace and good order throughout the country. I will not elaborate this matter. There it is.

That is the background of this question. I think it was the representative of Pakistan himself who referred yesterday to the fact that India is always insisting that the positions of Pakistan and India are not the same in relation to Kashmir. That is true in more than one respect. It is true in the respect that Pakistan has no *locus standi* there. And it is true in another respect: the armies of the Union of India are in Kashmir because Kashmir is part of the Union. The armies of Pakistan are in India because they are a conquering, an aggressor, army. And therefore our position is that we will not be treated like two peas in a pod in this matter. And there can be no question of any intervention, any good offices or anything. And I say this with all the responsibility that rests on me as a member of the Government of India. We will never consider this question on the basis of equality between Pakistan and India—a fact which has been recognized by the United Nations Commission for India and Pakistan times without number. Even with regard to

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the still-born plebiscite administratorship, there was no question of Pakistan's having anything to do with this matter.

Then, the next lot of things that have been dealt with is the question of accession. The President is aware—for he was at that meeting—that I dealt with this matter at great length on the last occasion, and in the proceedings of the Security Council there are references to the law and the facts in relation to it.

Accession of Indian States to India is not anything that even started with independence. It was provided for by the British Parliament as early as 1935, when the dawn of independence became known to the practical British people and they did not want to leave India with a congeries of States warring one against another, whatever their differences with us might have been. The wiser among the statesmen in England, and Parliament as a whole, recognized that the unity of India was neeessary both for the Indian people and for the world. And therefore, as early as 1935, twelve years before our independence, the British Parliament provided in the 1935 Act for these States to come into some sort of union. And so the idea of accession and the whole machinery, the whole mechanism, the architecture of accession, was provided in the 1935 Act. And that remained unchanged. It is not as though for the purposes of Kashmir, or because the British were going away, or because paramountcy lapsed, a new machinery was provided. That accession machinery is provided for in the Act of Parliament.

Afterward, when the British left India, what was the position in regard to what were then called the Indian States—all 561 of them, not one or two but 561? They were all "sovereign and independent" but none with either an international status or a capacity to defend themselves or a capacity to maintain their communications, or anything of that kind, no sovereignty in function or in practice, but sovereignty in the sense that there was a prince, there were guns fired when he went out, all that sort of thing.

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So the accession question, on the one hand, is an old question. It assumed a new complexion when the the British withdrew from India, from undivided India—and, in the course of 1946, 1947 and 1948, many changes took place. Before independence was actually established, for some time our Constituent Assembly, our constitutional discussions, were on the basis of a confederation in which the present territory known as Pakistan would also have been part of India. I refer to this because there are moving and dynamic factors in the matter.

Accession is provided for by law, What is required is that the acceding State have a particular form in which to make an application for accession, and when that application is made that application is made, that application is accepted, on behalf of the Government of India in the beginning, but later on behalf of the Dominion to which accession is asked for by the Head of that State. If you take an analogy in municipal law, there must be an offer and an acceptance ; that makes a contract. That is, the acceding State makes an application, and it is also laid down—and particularly for those who have a republican tradition it is necessary to say this—under the law that application has to be made by the Head of the State. Whether the Head of the Maharajah, whether he is the feudatory or whatever, makes no difference. He was Head of the State ; no other accession would be legal. That is provided for in the Act itself : that the application for accession has to be made by the Head of the State. Therefore, in the case of these 561 States – not only Kashmir – the applications for accession were made by the princes, chieftains, feudatories—whatever they were ; and they were accepted, so far as the States that acceded to us were concerned - and the vast majority of them did—by the Government of India in the person of the Governor-General, who was the Head of the State on this side.

That takes us to the question of this particular accession. I will not at this moment go into the back-ground of the few days prior to the accession. I will not avoid it ; I will come back to it. But let us get rid of this particular factor.

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The Manarajah sent a letter to the Governor-General that his State desired to accede to India he made this choice, for whatever reasons—and Lord Mountbatten, the Governor-General, wrote at the bottom "We accept the accession", or whatever the words were, I forget just what they were, but they were the prescribed words. Therefore, taking the analogy of municipal law, the offer by the State and the acceptance by the other side made a completed contract, and it is not possible, any more than with a civil contract, to alter it by any other instrument. There is no provision whatsoever—and the representative of the United Kingdom and his advisers will be familiar with this—in the enactments of Parliament for "de accession" or conditional accessions or provisional accessions. An accession, once made, is complete.

Therefore, the accession of the State of Jammu and Kashmir, on 27 October 1947, was a full and final accession. The only way that any change could take place in this is by consent. It is laid down in the Act of Parliament – and in order to save the Council's time I will not read it out –that any changes, any modifications, in the terms of accession must be asked for by the acceding party and agreed to by the Dominion concerned. In other words, they could not change it by themselves. Once in, you cannot get out.

Now while the Soviet spokesman may not agree with us—he may even feel that we are rather backward, or that we are rather forward, or whatever it is—all the others around here, and more particularly the United States and the United Kingdom, would have to agree, with all the emphasis possible, that there cannot be any question of any part of a federal State breaking away at will. The United States waged the most sanguinary of all wars in human history where more people died than in the First World War, in order to maintain the right of the Union. In the case of the United Kingdom the questions as not arisen in that way. But I believe there was an attempt made by one of the state of Australia, Western Australia—Australia is a federation; it is called a Commonwealth to secede. Their Constitution provides for a system of referen-

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dum—they do not call it a plebiscite—on certain parts of legislation. They held a refrendum. In that referendum, Westerm Australia, speaking in rough figures, by some 136,000 to 76,000, voted in favour of with drawing from the Commonwealth. This matter was immediately referred by the dissenting party to the supreme tribunal in the British Commonwealth. It was before the Statute of Westminster and therefore it was not possible for any Dominion to have any legislation of this kind introduced, except in the British Parliament. It went to the House of Lords and the House of Lord sheld that it was not possible, that it was not permissible, that it was *ultra vires* for anyone to secede. There is no way in our system of government for people to get out like that. What is more, if there is to be a refrence to the people, it canot be a refrence to a particular part. It must be a refrence to all of the Union. It is conceivable that if the whole of Australia—not Western Australia alone but the whole of Australia—had said by majority vote, "Let Western Australia get out", even though the legal position might be the same, the moral and political position might have been different.

So when people speak about plebiscites, about refrence to public opinion, it is not as though you take any particular area and say : What about it ? In this case no State would be able to remain entire. I had not intended to develop this argument stage, but since it has begun I had better finish it so that I do not take any more time than necessary. I want the Council to understand that India today is a federation of about fourteen States and various units made up of a large number of elements, former provinces of British India and 561 States. India lives in the conditions of a troubled world. It lives in conditions of its own diversity : it is an old country but a new nation. If it were to be established - and I would like the major Powers here to realize it – that any part of the country can secede, by either external intervention or propaganda or by some other means, or for some temporary disaffection of some kind, then we would put the whole of the Union in the melting pot and India would become not a congeries of States,

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but a warring group of state less entities, and this is not a situation we are prepared to face. It was never contemplated in the Act. It is not common sense and it will never be tolerated by our people, and let there be no mistake about it.

Therefore, when people speak about conditional accession, they may be speaking loose language, but there is no such thing as conditional accession. Once an accession is accepted, it is complete. Now the argument in favour of this has been that Lord Mountbatten—and it must be presumed that as a constitutional Governor-General he was acting with the consent of his advisers, his ministers or members of his council at that time ; I do not know who they were, but let us assume that—wrote a letter in which it was said that there would be consultation as regards the wishes of the people, or whatever it was.

I do not want to labour the point about "simple futurity" or make a determination about "shall" and "will" and "wish" or "desire" or anything of that kind. I maintain, and I maintained in 1957, that the act of accession is complete. And this letter stands separately and its only meaning at that lime was that India, having evolved out of a strong nationalist revolution, peaceful as it was, and what is more, unlike its neighbour, having adopted democratic traditions and democratic institutions, was anxious that this accession should not be merely rubber-stamped by the Maharajah, who was not popular, but should also have the moral consent of the people. That is all it meant. It required a further moral reinforcement on the part of the people ; and a moral reinforcement was sought not only in regard to Kashmir but in regard to a number of other States. There were States, small or large in the then undivided India, the then free independent India, which were perhaps - be cannot compare evils—but which were perhaps far more autocratically governed than, shall we say, Kashmir itself. In each case we made every attempt we could to obtain an assessment of opinion, and the only way to do it—and here we have good precedent - was to do it the way the British did it. The British did not convene a constitutent assembly. They did not ask for a plebiscite. They did not ask for circulation of the Indepen-

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dence Act in order to elicit public opinion. They negotiated with the main political party, as a great national movement, and the entire settlement of India was not on the basis of what we are accustomed to hear in these halls, of self-determmation, in the abstract; but by an assessment of the people's will. The British abdicated in terms of friendship and transferred power by negotiation to the national movement. We have followed the same example.

As a national movement we were parallel to the National Conference in Kashmir, which had begun as a communal movement ; in fact in India the earlier national movement was not necessarily as broad as it was later on. We consulted them; we consulted not just one individual, for it is always wrong to put up individuals and say that their opinions have changed. The whole of the notionalist movement was consulted, so we did not find ourselves in the position where we became the allies to the Maharajah against the popular movement. And that was the purpose of this phrase.

Then large numbers of statements have been made about what Mr. Gopalaswami Ayyanger stated, about whas the Prime Minister said, about what Sir B.N. Rau said and so on, and I hope Sir Muhammad will do us the honour, if I may say so, to accept the fact that not one statement is as good as another. Mr. Gopalaswami Ayyangar can be quoted in support of provisional accession, as it was called, or conditional accession. Let me quote what Mr. Ayyanger said in some other statement. Mr. Gopalaswami Ayyangar, who preceded me here, and who was the Minister of State at that time, has been quoted times without number, and it is possible to do that because no member of the Security Council, with all the troubles they have in their own countries and in other countries, can be expected to read all this. He was quoted yesterday as having said that the accession was provisional. But at the 242nd meeting of the Security Council—not on Kashmir; on Kashmir we have not held 200 meetings as yet ; we have passed the hundredth meetingthough Mr, Gopalaswami Ayyangar said the following :

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> The instrument of accession is a document complete in itself. To the best of my memory, the instrument, in the case of Kashmir, does not contain any condition"—and you can examine the instrument ; it is one application and then at the bottom of it we find the name "Mountbatten" written—"It does not state that the accession is provisional. The commitment which the Government of India made for themselves on the question of ascertaining the wishes of the people was contained in a letrer accompanying the accepted instrument of accession. The Government of India is certainly bound by its commitment, but it be wrong to call the accession itself a provisional acceswould sion."

I shall deal later with the question of what is binding and what is a commitment, but I want to establish here and now that the one person from our side who has been quoted against us. Mr. Ayyangar, has made it very clear at various times what took place. At the 285th meeting of the Security Council of 19 April 1948, Mr. Ayyangar stated :

> "The accession which took place on 26 October 1947 was both legal and lawful."

In fact it could have been made in no other way. The Act of Parliament by which we were governed at that time as a British Dominion made no provision for any provisional or conditional instrument of accession. It made no such provision at all. Mr. Ayyangar continued :

> "It has been followed up by India in the discharge of all the obligations that her acceptance of the accession has imposed upon her. She has saved the Jammu and Kashmir State from disintegration."

That is another point altogether. That is to say, it is not as if there was a contract written on paper, signed, sealed and delivered ; by performance we have acted as a party to the accession. From the date of receipt of accession, we have

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been responsible—and we have spent a lot of treasure in doing this—for protecting Kashmir from external aggression and we have discharged the obligation of a sovereign Power. It is not as if there was merely an offer of acceptance to no purpose ; this contract has been performed to the full although it is wrong to speak about contracts both in regard to marriages and in regard to these relations, because status has been acquired, the status of Jammu and Kashmir in the Union of India in that it is one of the many States in India, as integral a part of India as any of the other States or any part of India ; it is as integral a part of the Union as anything else and the Union will resist any attempt at disintegration. It will do this for its own sake and also in the interests of all the States of Asia and the world ; we will not countenance the disintegration of our country.

India, therefore, defends Jammu and Kashmir's status of integration. Who went there when she was attacked by the tribesmen, in the name of religion, those of the same religion were attacked and killed, as we shall show later, when the territory was being made the victim of rape, arson, loot and murder ? It was the Indian Army, 'the Indian people and the Kashmir people who joined in repelling the attack. India is now resisting those who are attacking her integrity today. Mr. Ayyangar added :

> "She is protecting the State's large population from the unfriendly attentions of raiders from outside. The accession therefore subsists today and will subsist even after the fighting ceases and peace and order have been restored."

It has been said that once the raiders go, then we will do something. It did not mean once the raiders go ; in fact the raiders have not gone, they are still there. The fact that they are called the army of a country which ought to be our friend does not stop them being raiders ; they are raiders into our country and they still remain there. It could not said of them, as was said of the British Empire, that they came in a fit of

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absent-mindedness and stayed , they came here deliberately and that is that.

On the question of accession, therefore, the accession is full, it is complete, it is final. There is no law in our system, and there is no power except the power of "force majeure", of external force, that can dismember India ; in fact, for the information of this Council, the Indian Parliament is not competent to divest itself of territory nor to meet our neighbours in some way. Without looking into the logic of it, we tried to transfer certain territories in the east of India to them, but the Parliament of India has no right to divest itself of territory. It would need and amendment of the Constitution and it would require a two-thirds majority of the two Houses, which you would never obtain because we do not have a ruling party with a two-thirds majority. If we had, it might be all right, but we have not. So much for accession.

Then we come to what is called the question of sovereignty. I myself would not like this word sovereignty to be bandied about very much because it is undefinable. It varies within the context of things, but broadly speaking, in the context of the United Nations, I will give you some idea of what it is. So far as the sovereignty of Jummu and Kashmir is concerned, it has become the sovereignty of the Indian Union by the act of accession, by the treaty of the Maharajah with the British Crown. Both by the functional aspects of paramountcy and by the fact of accession, sovereignty resided in the Union of India, and so when we speak of the sovereignty of the State of Jammu and Kashmir and the sovereignty of the Union, they are interchangable terms. The exercise of sovereignty in certain spheres would be within the State according to our Constitution, and this sovereignty has never been questioned by the United Nations. On the contrary, it has been admitted in many places, as I shall point out. It has been admitted in the assurances given by the Commission [UNCIP] to the Prime Minister and the Government of India, and two things at least make it clearer. One is the responsibility for the security of the State. Responsibility for the security of the

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State rests with India, and I would like to ask the Council how, under international law or in the practice of civilized nations a country can take upon itself the responsibility for security and defence unless she is sovereign over the territory or, in the case of a Trust Territory or something like that, the responsibility has been placed upon it by international authority.

Responsibility for the security of the State vests in India, the Commission told us, according to the resolution of 13 August 1948. The Commission further stated that the sovereignty of the Jammu and Kashmir Government over the entire territory of the State shall not be brought into question. This was when the question of the evacuation of Pakistan troops and local authorities and so on was being discussed. Assurances were given on behalf of the Commission that the sovereignty would not be brought into question. It was also stated that there should be no recognition of the so-called "Azad" Government, which is spoken of here as if it were another Government. It is part of the decision of the Security Council that there shall be no recognition of the so-called "Azad" Government. In fact, at that time the "Azad" Government was merely the local authorities and in the course of the squabble it acquired some kind of a status. In the arrangements made by the Commission, it was for Government of India– not for the Government of Pakistan—to give assistance if assistance was required for the maintenance of law and order; that was in the exercise of our sovereignty. It has been definitely said that under the existing cease-fire lines –at the time of the cease-fire mention was made of various places where there were all these pockets—it was for the paramount authority, the Government of India, to give them assistance. There was no other sovereign in the entire territory. The *de facto* authority may in varying degrees be said to be exercised by the Government of Pakistan on the one hand and the Government of China on the other.

Thus the Government of India maintained garrisons to prevent the incursion of the tribesmen and to guard the main trade routes. This relates to the territory now occupied

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by Pakistan, over which the Commission said on numerous occasions Pakistan had no authority, and in which the Goverenment of India was to maintain garrisons to prevent the incursions of tribesmen—because Pakistan is not the only country with which we have a frontier; we have other international frontiers and therefore it was our responsibility to maintain the outer perimeter of India. The outer perimeter of India is our responsibility and all that lies behind that perimeter becomes our territory.

The last of these assurances for the exclusion of Pakistan from all the affairs of Jammu and Kashmir is that in fact if a plebiscite at that time had been possible, if the thing has not been prevaricated in that way, things would have changed. If a plebiscite had been held, the Plebiscite Administrator would have had to function through the State of Jammu and Kashmir and not through Pakistan. Pakistan might go there as *amicus curae* or to offer good offices, but had no position in the matter at all. The Government of India was responsible to the United Nations and you can read the whole of these documents and see that in each case when the Prime Minister asked the Commission "Is this the case ?", the Commission replied : This is the case, your interpretation is correct." These therefore are the assurances ; they have been distributed as United Nations documents and are available to you. I shall not quote the numbers , but they are in the Official Records of the Security Council. They are here for you to look at. Therefore, sovereignty has not been questioned by the United Nations. It flows from function, it also flows from the fact that the Union of India is one and entire, and its sovereignty springs from the Act of the Constituent Assembly as implemented over all India.

Sir Muhammad goes on to deal with aggression, and much to my surprise he says it is an academic question. I do not know whether he had in mind the debate that goes on year after year in the Sixth Committee trying to define aggression. It may be that some people may regard that as academic. But so far as we are concerned, the aggression in Kashmir, either by Pakistan or by China, is not academic ; it is something that

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eats into our vitals; it is something that affects our national integrity, to put it mildly; it is something that sits on our economic development; it is something that contributes to the unsettlement of our continent. Therefore, the aggression is not academic to us.

This is what Sir Muhammud said :

> "My second line of argument will be that, whatever may be the merit of that part of the controversy—on one side the claim ; on the other side, the denial of it—it was after the so-called aggression..." [1008th meeting, para. 21].

But with thousands of miles of territory occupied with, according to some people, forty battalions, according to others, twenty-two battalions—they need thousands and thousands of Pakistan troops ; they are part of the regular army of Pakistan, today modernized, thanks to their military allies— with all this, you cannot call it academic. It is almost like saying, when two people are having a fight and one man has his hand gripping the other man's throat, "Why are you worried about this ? We are together".

I continue to quote :

> " it was after the so-called aggression, whether it be related to the situation created by the incursion of the tribesmen in October 1947, whether it was the entry of the regular forces of Pakistan into 'Azad' Kashmir ... whatever may the situation with regard to that, it was long after these two dates that the Commission's resolutions of 13 August 1948 and 5 January 1949 were accepted by the two Governments," [*Ibid*].

I am prepared to agree with this. But if that were so, then why does Sir Muhammad raise the question of accession ? —because accession is admitted in the resolutions, sovereignty is admitted in the resolutions he cannot have both ways.

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Let us take it from the resolution of 13 August 1948. Whether the provisions of this resolution are capable of implementation we shall see later. But if the resolution of 13 August 1948 is the beginning, then we are to examine what the position is in relation to that resolution. On 13 August the Pakistan Government did not inform the Security Council—and I do not want to use strong language – but withheld from it the information in regard to their own military position in the area Pakistan is now occupying. At the time of the 13 August resolution the Commission told us that the Pakistan Government had no authority, that their troops were not functioning that they were not in functional, *de facto* possession of the northern areas. On 13 August Pakistan had not illegally annexed, under the terms of its own Constitution, any part of the Union of India, and therefore, since 13 August and 5 Januarry—the two resolutions must be taken together—if that is the position, certain other things have taken place. Therefore, if for a moment they dismiss the idea – let us not quarrel about the tribesmen, and this, that, and the other—what has happened ? After all, there are only three resolutions that the Government of India have accepted : the resolutions of 17 January 1948, 15 August 1948 and 5 January 1949. The Security Council has since passed many resolutions ; we have not accepted any one of them. But because of the traditional hospitality exercised in our country, when people came to us we received them and talked to them. So the issue is that these resolutions created no situation.

I would submit that since the resolution of 13 August 1948 also, aggression has taken place and aggression is continuing today—I shall deal with that in a later part of my observations. That is my main purpose in participating. There has been the occupation of the northern areas ; there has been the receiving of the so-called accession from the rulers of Hunza and Nagar ; there has been the occupation of Gilgit ; there has been the annexation of Baltistan ; there has been the taking-in of various territories even apart from the continual infringement, or attempt at infringement, of our borders, to which I shall

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refer in a moment. Therefore the aggression is a continuing aggression.

So Pakistan, in this case, begins to look almost like a colonial Power of the nineteenth century seeking an expanding frontier and, in order to protect one frontier, it seeks a frontier beyond that, and then to protect that frontier, it seeks a frontier further on. We had a Viceroy in India called Lord Curzon, who enunciated this policy of the expanding frontier until he found himself in Afghanistan, much to the discomfiture of our friends of the present time. Therefore aggression to us is not academic.

I shall have to deal with this question of aggression again, because when I come to make our submission to the Security Council we shall not merely turn to Pakistan, because we do not regard ourselves as on the same plane, or the same level, with it in this matter. We shall have to ask the Security Council where it stands in this matter. The Security Council has given certain assurances. The Security Council has not repudiated the Commission. It is no concern of ours whether the Commission sent a copy of the letter to the other side or not, to Pakistan or not ; that is a matter between the Commission and the Security Council. When that Commission—a commission appointed by the Security Council so composed that there was one nominee of the Pakistan Government, the former Government of Argentina with which at that time they had intimate connexion, and two others not nominated by either of us - when that Commission gives us an assurance, that assurance is given on behalf of the Security Council, otherwise these men have no position, no locus standi, and there is no need for them to come to India or to do anything of that character.

Now therefore, the question of aggression as it exists today is not academic. It is real. But perhaps this may be an occasion to dismiss the whole question of aggression at this time. The Council will remember what I said a while ago about the question of the liberation movement in North Burma.

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What actually happened in Kashmir was that when the British withdrew from India, the Maharajah in his wisdom, or lack of it, was probably trying to play both sides against the middle or not make up his mind—you know, Maharajah's minds are often made up for them by other people – but however that may be, then the accession had not taken place. And I speak to you with all seriousness on behalf of the Government of India ; until that accession took place the Government of India made no attempt, by political persuasion, by pressures of any kind or by the sending of armies or anything of that character, to get any State, let alone Kashmir, into India. But what does Pak istan do ? I would like at this point to refrain, because too many extraneous issues have been brought in already ; Sir Muhammad referred to them. But in the case of various other territories which were contiguous to Pakistan, approaches were made to us, but we did not encourage them. The ruler of a certain part of Baluchistan wanted to seek accession to India. We did not encourage him. But on the other hand, Mr. Jinah tried to play with the Maharajah of Jodhpur on the territorial frontier or the Nawab of somewhere else, far away from Pakistan but on the territorial frontiers. We did not put any pressure on the Ruler of Bahawalpur, whose State was contiguous to India.

There again, let me dispose of this issue. It has been said here that there is some theory somewhere that because the population of Kashmir is, in the majority, Muslim in its religion, therefore they should accede, by some written or unwritten right, to Pakistan. We do not accept this. We are not a theocratic State ; we are a secular State. In our country, in our Union and under the law of civilized nations it is not religion that qualifies people for citizenship. Now, it may be said that is what we agreed to. We never agreed to anything of this kind, and if anyone quotes British statesmen or parliamentary enactments, I would like the Council to look at entire text of what is being quoted. The parliamentary enactment in relation to the transfer of power in India, as the representative of the United Kingdom will, if necessary, inform you later, did not concern itself with the Indian States at all. In fact, it

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definitely stated that the Act had no relation whatsoever to Indian States ; it concerned only British India. Lord Mountbatten has been quoted as having told the princes somewhere, "Although you may accede to any body you choose, you must take into account geographical considerations and communal representations."

I want to say to you with the fact of authority behind me that he made no such statement. What has been quoted is what somebody said Lord Mountbatten had said. The text of his speech is in the archives of India. What he said was, that while it is true that each of you is entitled to accede to one or the other Dominion, the question of your sovereign independence, that is impractical, or your acceding to any body you like does not arise, because you have to take into account geographical contiguity. Not a word was said about communal composition in the address to the Chamber of Princes or to anyone else : not a word was said about the ruler being a Muslim who would accede in this way, or the subjects being Hindus who should accede in that way.

We are a secular State. Religion is not a qualification or a disqualification in our country, and we stand by this as fast as we can. In fact, Kashmir is one of the acid tests of this. The introduction of this argument is so facile and people who do not know the in's and out's of this thing are at least delighted to accept it. There has been no statement on behalf of the Government of India, either by my Prime Minister or any member of the Government or by the Governor-General who was then the Head of the State, to any authority saying that communal composition was one – that is, the religious composition of the factors in accession. What was said was "geographical compulsion".

So far as Kashmir is concerned, the State of Jammu and Kashmir—we must not forget that it is not Kashmir but Jammu and Kashmir, it is one—is continguous to the Union of India, is has a frontier with Pakistan, it has a frontier with Afghani-

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stan and a frontier with China. I have not heard any arguments in this Council—there may be elsewhere—that parts of Kashmir should accede either to Afghanistan or to China. But as far as Pakistan and we ourselves are concerned, they are nearer to us than to them. It is the factor of geographical contiguity that is really relevant because the accession has taken place. Jammu is practically part of the extension of the mainland of India, and all the communications and things of that character are taken from India. So even in regard to geographical contiguity, if you want to be very liberal on the other side, you might at least say that they are equal. But they are not.

In fact, it is not merely mileage that covers it, is the whole set-up of things. So the argument that three-fourths of the population of Kashmir are Moslems and that therefore they should accede to Pakistan—is groundless for then what would happen to the 60 million Muslims inside the Union ? India today is the third largest Muslim populated State in the world. Only Indonesia and Pakistan have more than we have. There are 60 million Muslims living in our country who are content with a secular State, who are accustomed to the habits of democracy, who are as loyally affiliated and patriotic as a Christian, a Jew, a Buddhist, a Hindu, an Animist or anyone else in our country. How can we betray the faith that is vested in the country by our compatriots who are of another religion than the Mohammedan religion ? Religion plays no part in the adherence of our people to our State. Therefore, I speak with some feeling on this because this is one of those things that has been put over, surprisingly enough, among Western communities which ought to be turning their faces against them. This seems to make some appeal of some kind because there has been, in international connexions, talk of the Islamic belt and the Islamic brotherhood and this and the other. This sort of thing has happened in the world so many times. Today nationalism and membership of the Union are what charter characterizes the citizens of our counry.

So there is no special claim in regard to Kashmir except that there could be only geographical contiguity or accession,

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If the Maharajah had acceded to Pakistan, we would have accepted it because we have a large enough country and we have large enough troubles of our own. That is why we said from the housetops in regard to another matter : whatever our troubles are with Pakistan, whatever Pakistan's internal difficulties, whatever some foolish people may say, we have no desire, in spite of our past connexions, for any part of Pakistan to come into our country because we have troubles enough of our own, and, therefore, we leave it at that. So then we come to this question of accession. I dispose of it in this way.

What happened ? Soon after the British left, the leaders of the real liberation movement were imprisoned. I believe that at that time some of them were released. I do not quite know. One of the people whom the State authorities were seeking to arrest at that time was the present Prime Minister of Kashmir. He certainly was not a liberationist sent by Pakistan. One of the people imprisoned by the Maharajah for association with the liberation movement just before independence was Pandit Nehru, who is now the Prime Minister of India. So all these people are interested. At that time there came into Jammu and Kashmir, fishing in troubled waters, numbers of people who have been spoken of as raiders, whatever that means. We have no evidence to think that they came to steal a couple of cattle or go away, or something of that kind. They were people what we were told, were tribes-men. I have not been able to find out what that means. If it is meant that they came from Trans-Pakistan, from the territory beyond the Durand Line, there is no evidence of it. But let us assume there is. If they came from beyond the Durand Line, what right has a civilized State, which was in existence either as a result of an agreement between its neighbour, the British Parliament and itself, to permit its territory, its fuel, its food, its communications to be used in order to permit aggression on a neighbouring State. That is not a practice of civilized nations. They have the right to give them sanctuary, if they want to, but they have no right to allow them to pass over their territory.

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At that time the then Prime Minister, who a few days before was still a citizen of India, said : "What can we do, they are our co-religionists ?", and this idea of religion was raised again. And so people came day after day.

I have no desire to repeat what I said before. If you refer to the proceedings, to the key which I have circulated, you will find entries in his diary of a Major-General Scott. He was and is, I believe, now a British national. He was a General seconded by the British Government to command the army of the Maharajah. He was the Commander-in-Chief of the Kashmir forces. Major-General Scott reported at various times to the Maharajah. He was the Chief of Staff of Jammu and Kashmir. He submitted has first report of border raids from Pakistan on 31 August 1947 long before the accession. Protests were made to Pakistan by the Maharajah, and they were submitted by Major-General Scott.

The Kashmir Government protested by telegram to the West Punjab Government against armed Moslems from the Rawalpindi District infiltrating into the State. Protests were also made to the Deputy Commissioner. If you know the conditions that existed there you have got to think back fifteen years. We were the same country and a few people would come over this way by mistake or for the purpose of stealing cattle or for some other reason. This sort of thing happened. Anyway, protests were made.

Then on 6 September there was a marked increase in the activities of the Pakistan troops on the main road. A patrol visited Ali Beg twelve miles south of Bhimbar. Major-General O. de T. Lovett, commanding the 7th Infantry Division, was informed. On 13 September 1947 a Pakistan Army patrol visited Ali Beg and Jatlai, fourteen miles south of Bhimbar, both in the State territory.

I could read from Major-General Scott's diaries further entries showing how the rate of strength increased, and by

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about 18 September the railway service between Sialkot and Jammu—Sialkot is in Pakistan, Jammu is with us – was suspended by the Pakistan authorities. I will tell you why they should not have done it. It was suspended by the Pakistan authorities without any reason and in contravention of the stand-still agreement. Armed gangs entered these places, including Poonch, on the State border. On 28 September hundreds of armed men with service rifles, automatics and spears, attacked a State patrol near Chak Akka. Hundreds of armed Pathans entered State territory on 30 September. The Jammu and Kashmir Government protested on 3 October telegraphically to the Pakistan Government that hundreds of armed people from Murree hills in Pakistan were operating in Poonch ; they were also protesting the lack of essential supplies, including petrol, rice, salt and cloth, which were being withheld.

> "The fighting broke out with renewed activity by armed man in the Chirala area, near the Jhelum River. There was fighting between raiders and State forces."

State forces went into operation. Whatever may be the opinion of the Maharajah and his Government, he had the responsibility of protecting his State against raids from outside.

> "If 10 October sections of the Pakistan Army, followed by an armed gang attacked Pansar Village in Jammu."

And this is the first time that we have evidence—although it may have happened before - of elements of the Pakistan Army actually entering Jammu and Kashmir while Sir Muhammad and others were telling the Council that no Pakistan troops were in Kashmir, until afterwards they were found out :

> "Pakistan has cut off from Kashmir her supplies of petrol, etc."

The economic boycott, again, is a violation of an agree-

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ment. The Maharajah, in his wisdom or lack of it, instead of acceding to one Dominion or the other—which would have been better for him, for better or worse—asked for what is called a stand-still agreement. Until he could make up his mind to accede to anybody, he wanted both India and Pakistan to maintain the normal amenities of life, such as, post office communications, and so on. Kashmir regards salt as a very essential requirement—salt, petrol and things of that kind; trade relations, post office communications, and all those things.

I notice that it is implied in Sir Muhammad's observations that this stand-still agreement constitutes some recognition of Pakistan's sovereignty or paramountcy, or something of that kind. The fact that the Jammu Government asked for a stand-still agreement with regard to posts and telegraphs simply means that there was one postal and telegraph system for the whole Union before partition, for the whole of what is called the sub-continent. Some letters go this way, some go that way. They had the same arrangement with us. They asked India for a stand-still agreement. We said, "We are prepared to discuss any agreement with you. Come over and talk about it." But by the time they could come over and talk about it, the stand-still agreement had been made with Pakistan, it had been violated, and an economic boycott was imposed by Pakistan. And an economic boycott in these essential commodities of life is very hard on a population such as that of Jammu and Kashmir.

So it was violated, and these raids had come through over hundreds of miles of Pakistan territory. They were well organized and well disciplined, and no one in the world who knows anything about these things could say that these were all raiders coming to lift cattle. They were led by Pakistan officers. It is quite true that there were some guerrillas among them, as Pakistan is discovering now, but they were properly led. They were officered by the Pakistan Army. There appeared on the scene a general called General Tarig. It sounds

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like a Phillips Oppenheim story, or something like that. General Tarig was none other than a commissioned general of the Pakistan Army who afterwards was dismissed – probably because he was too enthusiastic—but he is coming back through the rear door. Anyway, there was a General Akber Khan, who also was operating in the area. By that time these raiders had reached a very large number and had taken on the aspect of a large army.

We at that time appealed to Pakistan to deny its territory to these raiders and not to give them assistance, and the Prime Minister wrote to Mr. Liaquat Ali Khan, who was Prime Minister. The Governor-General of Pakistan, Mr. Jinnah, the founder of the State, who is highly revered in Pakistan and treated with a degree of affection in India, explained to the Governor-General of India on 1 November 1947 – and this is on record—that he had no control over the forces of the "Azad" Kashmir Government or the independent tribesmen, engaged in the fighting. We shall show the Council pictorial records taken at that time of Mr. Jinnah holding court with these very tribal chieftians in the territory of Kashmir—the people over whom he had no influence.

Then, later, Lord Mountbatten advised Mr. Jinnah of the strength of the Indian forces at Srinagar and of their likely build-up in the next few days. That is to say, the Indian Army, having entered and having pushed back the tide of invasion almost within a few hours of its approach to and possible sacking of Srinagar—they were turned back at the airfield—Lord Mountbatten advised them of the large build-up. He told him that he considered the prospect of the tribesmen entering Srinagar in any force was now remote. This led Mr. Jinnah to make his first general proposal, which was that both sides—he had placed himself on a plane of equality by then—meaning Pakistan and ourselves, should withdraw at once and simultaneously. Then Lord Mountbatten asked him to explain how the tribesmen could be induced to remove themselves, he having told us before that he had no influence. His reply was,

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"If you do this, I will call the whole thing off." They were the people over whom he had no influence. We at least suggest that the public propaganda line that the invasion was wholly beyond Pakistan's control was not true.

On 22 December, protests having failed to bear fruit, the Government of India formally asked the Government of Pakistan to deny the raiders all access to the use of Pakistan territory in operations against Kashmir - "all military and other supplies, all other kinds of aid that might tend to prolong the present struggle". It was a normal request for a Government to make. Even today, if a United States airplane—or a United Kingdom airplane, for that matter—wants to fly over our territory, they ask our permission and we gave it. They do not just walk through anywhere, so to speak. That is a normal custom. And if the airplane is loaded with any goods of a military character and touches down and, if we so wish, we go and inspect it. The same applies to us. That is normal international practice. So we asked them to deny aid, and is the Prime Minister has said in one of the letters that was read the other day, it was easy for Pakistan to stop these troops because they had to come by bridges which could either have been very easily defended or obstructed, or could have been blown up. Therefore, there was no excuse whatsoever.

This was an undeclared war against out country, in regard to the facts of which this Council was deceived by the Pakistan Government and its representatives. On 30 December 1947 the Prime Minister of Pakistan said :

> "As regards the charges of aid and assistance to the invaders by the Pakistan Government, we emphatically repudiate them. On the contrary , the Pakistan Government have continued to do all in their power to discourage the tribal movements by all means short of war."

If that is the position, how does Pakistan claim a position in Kashmir, in this territory it has occupied, and then talk about the tribesmen and things of that character ?

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On 1 January 1948 India came to the Security Council and requested it to call upon Pakistan to put an end immediately to the giving of such assistance – that is to the raiders – "which is an act of aggression against India." Some doubt has been expressed—unfortunately by people who ought to know better —whether we have ever complained about aggression. It is quite true that we came here under Chapter VI of the Charter, and not under Chapter VII, largely because, as I have said, fifteen years ago we had been, only a few days before the complaint, members of the same nation and the same country. Conditions were different. But we said that it was aggression even then. It was an act of aggression against India. I am sorry to say that the gentleman who sits opposite me, on 15 January 1948, told this Council solemnly :

> "...the Pakistan Government emphatically deny that they are giving aid and assistance to the so-called invaders or have committed any act of aggression against India. On the contrary, and solely with the object of maintaining friendly relations between the two Dominions, the Pakistan Government have continued to do all in their power to discourage the tribal movement by all means short of war.
>
> "The allegation made by the Indian Government that the Pakistan Government is affording aid and assistance to 'Azad' Kashmir forces, or that these forces have bases in Pakistan territory, or that these forces are being trained by Pakistan officers or are being supplied with arms or material by the Pakistan Government is utterly unfounded."

I submit that this is contrary to the fact. What is more. It was either at that time or a little before or after, that the Governor-General of Pakistan gave orders to the Commander-in-Chief of the Pakistan Army, General Gracey, an Englishman who was acting for the permanent general, to wage war against India. Happily for the good of the world, General Gracey disobeyed. That is to say, he consulted General Auchinleck—

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who in fact had no authority in this matter – and they decided not to wage war. But the permanent Commander-in-Chief—we have evidence of this and we will show it to you if you want—inspected the troops, and egged them on to fight ; but in any case here was the Governor-General giving orders to his Chief of Staff to wage war against India.

At the 229th meeting, held on 17 January 1948—which is an important date because at that time the Security Council passed a resolution which was one of the few resolutions they accepted – Sir Muhammad Zafrulla Khan, then Pakistan's Foreign Minister, who, I therefore assume, spoke with authority and knowledge, solemnly stated in the Security Council :

> "One matter to which attention is drawn in the Indian statement is that the tribesmen, when they captured Baramulla, committed certain atrocities, including atrocities against the immates of the local convert there. I have no knowledge and my Government has no knowledge with regard to what has actually been happening inside the Kashmir State, except so far as reports have appeared or communications have been directly addressed to my Government."

And these are the raiders against whom armoured cars and all the panoply of force of the Indian Army—within the short time available to us after receiving all the applications for accession—had to be used, and it took us four months before the Indian Army rolled back the tide of invasion. It was no joke.

Sir Muhammad knew all about this because, according to Father Shanks, the Roman Catholic Father of St. Joseph's Convent, General Cunningham, who was the Governor of the North-West Province of Pakistan—unhappily no longer in existence, and not by a plebiscite—sent troops to Baramulla to rescue Father Shanks. In a statement made as late as June 1958, Father Shanks said :

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> "At the end of Mass, there was a thunderous knock at the door of the ward, and we thought that the end had come. It happened to be our rescue convoy, sent by Sir George Cunningham, Governor of the north-western frontier province of West Pakistan. And the rest of that day was spent in getting our belongings together in preparation for the trek out of Kashmir under the protection of a Mahsud officer and some non-commissioned men belonging to the regular army."

I shall have something to say about these individuals later. Mr. Gopalaswami Ayyangar, who represented India at that time, also informed this Council on 19 April 1948, before Sir Muhammad made his admission in confidence to the United Nations Commission for India and Pakistan at Karachi on 8 May that :

> "A mountain battey of the Pakistan Government, in civilian dress, has been sent to the front. It consists of some 1,300 personnel, out of which about 600 have been sent to Nowshera front via Bhimbar and 700 to Poonch from via Palandhri."

We had been observing the action at one of these fronts. At a subsequent meeting of the Security Council, ending in the adoption of its resolution 21 April 1948, Sir Zafrulla Khan did not deny this.

There is other evidence. A gentlemen called Lord Birdwood, who is very well known to the United Kingdom delegation, though he is no friend of ours as he does not approve of us very much, has written a book on Kashmir. He says :

> "Once again I draw attention to the obscurity surrounding the first use of Pakistan regulars in the war."

General Headquarters in Rawalpindi, in so far as they are prepared to discuss the matter, assured us that no regular unit

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was moved before May. That is the date when Sir Zafrulla Khan admitted that armies had gone. A battery of mountain guns with infantry escort were in action in an unsuccessful attack on Poonch on 17 March. Again on 21 March, General Kalwant Singh of the Indian Army had to abandon an attempt to land on the Poonch airstrip, since it was under artillery fire. The tribesmen had no artillery. He was, however, able to arrange for the landing of 25-pounder guns of the Indian Army, which were effective in saving Poonch for the Indians. On the Indian side, General Russell believed that regular troops were involved. He accordingly asked to be relieved of his command. That is to say, it was one of the unwritten laws of the Government of India that they would not ask British personnel to engage in any combat where Pakistanis were involved. We did not want British officers to be involved in this trouble. General Russell had opted to serve India. He was in command and, under those conditions, he withdrew.

The Foreign Minister, Sir Muhammad Zafrulla Khan, informed the members of the Commission—in confidence—that the Pakistan armies had at the time, on 8 May, three brigades of regular troops in Kashmir, that troops had been sent into the State during the first half of May. Sir Muhammad stated that these measures had been taken as a result of the spring offensive of the Indian Army.

The Indian Army had a right to be in Kashmir. It was sent there to protect that territory against invaders. And if any other army came to push them back, then from that point of time they became allies of the raiders. Sir Muhammad went on to say that the three main reasons—as is stated in the United Nations Commission's first report which had motivated the entry of Pakistan troops into Kashmir were the protection of the territory from possible aggression by Indian forces—Indian forces had at no time gone any where near Pakistan—; prevention of a fait accompli in Kashmir by the Government of India ; and the prevention of the influx of refugees into Pakistan. None of these arguments are tenable. They cannot be advanced by a civilized country.

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The United Nations Commission in the same report states :

> "The statement of the Foreign Minister of Pakistan to the effect that Pakistan troops had entered the territory of the State of Jammu and Kashmir, and later his reply to a Commission questionnaire that all forces fighting on the 'Azad' side were 'under the over-all command and tactical direction of the Pakistan Army', confronted the Commission with an unforeseen and entirely new situation.
>
> "According to the Security Council's resolution of 17 January, the Government of Pakistan was requested to inform the Security Council immediately of any material change in the situation. In a letter addressed to the Security Council, the Pakistan Government agreed to comply with this request. The Government of Pakistan had, however, not informed the Security Council about the presence of Pakistan troops in the State of Jammu and Kashmir. Sir Muhammad Zafrulla Khan explained that, since the Commission had been charged to deal with the problems related to the India-Pakistan question, his Government thought that the information should instead be given to it by the Commission"—it was so confidential – "but he had been unable to do this previously because of the delay in its arrival on the sub-continent."

But he had not had any difficulty in communicating other matters to the Security Council and, although on the one hand they denied it, on the other hand they were bound by the Security Council resolution of 17 January 1948, and subsequently the then Foreign Minister of Pakistan himself admitted that the Azad forces were under the over-all command of the Pakistan Army. They glibly told UNCIP that they had been there since 8 May because if they had not gone there, India would have gone there.

The view of the Commission on this matter is important.

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In paragraph 4 of the appendix to Annex 27 of the Commission's report they stated :

> "The Security Council resolution of 21 April 1948, which sets forth the terms of reference of the Commission, was adopted with cognizance of the presence of Indian troops in the State of Jammu and Kashmir . ."

In other words, the Security Council could not be expected to abet a crime. They passed this resolution and asked that nobody else come in, knowing that the Indian Army was there. There was no secret about it ; it was exercising its right paramounted the protection of the State - and so the Commission said that was done with the cognizance of the presence of Indian troops in the State of Jammu and Kashmir :

> "The presence of Pakistan troops in Jammu and Kashmir, however, constitutes a material change in the situation inasmuch as the Security Council did not contemplate the presence of such troops in that State, nor was it appraised thereof by the Government of Pakistan."

A member of the Commission, writing later, on 7 July— Mr. Korbel, who, I must say in fairness, was our nominee on the Commission, but still he was a member of the Commission and did not always take the view that we did wrote as follows :

> "Sir Zafrulla gave the Commission a three-hour discourse on his concept of the background of the Kashmir conflict." —rather a short one—"His tone was calm, his language precise, and, following the best traditions of his English schooling, his narration was broken by good stories. Then came the first bombshell. Sir Zafrulla Khan informed the Commission that three Pakistan brigades had been in Kashmir territory since May. He explained the measure as an act of self-defence...
>
> "The Commission explained to the Pakistanis that the

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movement of these troops into foreign territory without the invitation of that territory's Government was a violation of international law."

I want you to ponder this. It is once of several statements that I am going to cite in which representatives of the Security Council have said, as they have done on repeated occasions, that international law has been violated by acts of aggression. That is the first one. Then later, in May of 1949, Sir Owen Dixon, a member of the Australian judiciary, who can by no means be regarded as a partisan of India—his country is a military ally of Pakistan—said :

> " I was prepared to adopt the view that when the frontier of the State of Jammu and Kashmir was crossed, on I believe 20 October 1947," - that is before the accession—"by hostile elements, it was contrary to international law, and that when, in May 1948, as I believe, units of the regular Pakistan forces moved into the territory of the State, that too was inconsistent with international law."

I am informed by my staff that the President would like to have a recess.

The President : I should merely like to ask whether the representative of India would prefer to have a little recess now or whether he would prefer...

Mr. Krishna Menon (India) : If the Council wants to have a recess, I have no objection. It does not inconvenience me.

The meeting was suspended at 5.5 p.m. and resumed at 5.20 p.m.

Mr. Krishna MENON (India): I was dealing with the facts of aggression against the territory of the Union by a Power that should be a friend of ours and a neighbour. Until just a few days before the aggression, we were parts of one nation.

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On either side were people who are of the same family, inheriting the same traditions, and it was our hope that, while the amputation of India was a painful business, that surgical operation would bring relief and harmony. But that is another matter.

There are large numbers of other factors in this connexion, a great many of which are set out in the Official Records of the Security Council. In accordance with what I said at the beginning, I do not propose to go into them in great deal, but again I draw the attention of the Council to the key of those proceedings that I have circulated, where the subject headings are given.

Now we come to this other matter. As I said, much has been made of the kinship in religion, which is the alleged basis of the "claims" that Kashmir should be part of Pakistan—right or wrong. First of all, it was said that this is liberation movement of the Kashmir people, mainly Moslems suppressed by a Hindu Maharajah. I gave all the facts in connexion with it, and our views and sentiments on the matter are well known.

But now let it also be stated here that a great many atrocities were committed, atrocities of which Sir Muhammad had no knowledge; it is a great pity that the Foreign Minister of a neighbouring country had no knowledge of the atrocities that went on, while fanciful atrocities are known. Therefore, I want to deal with the first phase of this invasion, not in order to purvey the so-called atrocities, being accustomed to much cruelty in the world, but in order to refute the argument that this was a Muslim rescue operation or Muslim and Hindu domination.

The people who died in Kashmir were, by a large majority, people of the Islamic faith—men, women and children. The people against whom the worst atrocities were practised were not Hindus merely, but Christian missionaries. And the evidence on this does not come from the Government of India but from others, such as United States journalists, who have

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been by no means friendly to India in the discussion of this problem, and certainly not to me. Therefore, we can take that as more or less impartial evidence. There is photographic evidence taken by an Associated Press photographer at that time, presumably an American, who flew over a section of Kashmir and saw villages in flames. The villages, in an area of ten miles long by ten miles wide, had apparently been set on fire by the invaders, who were scouring the valley and moving in the direction of Srinagar.

So there was no question of a frontier loot. It was a well-planned attack on the capital city, of Srinagar—because he who dominates Srinagar dominates the valley, and he who dominates the valley dominates Kashmir. Therefore, it was a well-conceived military operation which was stopped in time by the Indian Army which flew in small units, in transport Dakotas and put men brought in the airplanes in the lines of battle straight away. That is the evidence of the Associated Press photographer, copies of which we have.

Then, on 10 November, a few days after the entry of the Indian Army, there was a report by Robert Trumbull, *The New York Times* correspondent. And here I want to say that while I am obliged to quote a newspaper report, I will not quote their opinions. I am quoting only a description of facts. Now Trumbull has written a great deal against the Government of India, about our shortcomings and that short of idea. He lived in India for five or six or seven years. I was in Japan at the time, I believe. He said the following, under dateline of *Baramulla* is a town of some thirty miles from Srinagar, where most of the atrocities took place. Now he said:

> "The city has been stripped of its wealth and young women before the tribesmen fled in terror at midnight Friday before the advancing Indian Army. Surviving residents estimate that 3,000 of their fellow townsmen, including four European nuns and a retired British Army officer known only as Colonel Dykes and his pregnant wife, were slain. When the raiders rushed into town on

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26 October, witnesses said one party of Mahsud tribesmen immediately scaled the walls of Saint Joseph's Franciscan Convent compound and stormed the convent hospital and little church. Four nuns and Colonel Dykes and his wife were shot immediately. The raiders' greed sometimes triumphed over their blood lust. A former town official said the raiders forced 350 local Hindus into a house with the intention of burning it down. The group of 100 raiders is said to be holding another 500 as hostages on a high mountain barely visible from the town. Today, twenty-four hours after the Indian Army entered Baramulla, only 1,000 were left out of a normal population of about 14,000."

I hope you will forgive me if I say that at Baramulla lies buried the flower of the Indian Army. Not one of the personnel who went out to combat these people returned alive to his home. Commanding them was a Muslim officer. All lie dead, buried in that soil and our country, if nothing else, owes a debt of gratitude to these people who defended our territory at that time.

Here is another account from Father Shanks, one of the Christian missionaries working in the area—not in the pay of the Government. It is a story that Father Shanks would never tell in the beginning. He describes the attack on the convent, without giving his own name, as follows :

"The tribesmen—great wild, black beasts they were—came shooting their way down from the hills on both sides of the town. They climbed over the hospital walls from all sides. The first group burst into a ward, firing at the patients. A twenty-year-old Indian ward, Philomena, tried to protect a Muslim patient whose baby had just been born."—No coreligion here.—"She was shot dead first. The patient was next. Mother Superior Aldetrude rushed into the ward, knelt over Philomena, and was at once attacked and robbed."—Robbed is a

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> euphemism—"The assistant Mother Teresalina saw a tribesman point a rifle at Mother Aldetrude and jumped in front of her. A bullet went through Teresalina's heart. At that moment Colonel Dykes, who had assured us we would not be attacked, raced from his room a few yards along the terrace to get the Mother Superior out of danger, shouting at the tribesmen as he ran, but the Mother Superior fell, shot, and Colonel Dykes collapsed besides her with a bullet in his stomach. Mrs. Dykes ran from her husband's room to help him. She, too, was shot dead. While this went on Mr. G. Boretto, an Anglo-Indian, was killed in the garden before a firing squad."

Here comes a story wherein, irrespective of other considerations, one liks to pay a tribute to the young man :

> "As the tribesmen raised their rifles, a young Afridi officer, who once studied in a convent school at Peshawar, rushed in and stopped them."

At least there are living characters with human qualities in these incidents.

> "He had been told his men were raiding a convent and had run all the way from town. That saved all our lives for a few seconds."

I should be wanting in decency if I did not express the appreciation of our people for the courageous conduct of this young man who, although he was on the other side—he was a Pakistan officer—did not fear the Afridi tribesmen.

> "We did not find Mrs. Dykes until the following day. She had been thrown down a well."

Another report :

> "A Pakistan Army convoy was sent to rescue us. On the

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way from Baramulla we stopped at the village of Boniyar to seek the staff of the World-Wide Evangelistic Crusade Mission. At Baramulla the towns-people told me of a young Muslim shop-keeper who had sacrificed his life rather than recant in his creed of religious tolerance. His martyrdom had taken place almost under the shadow of the convent walls, and in the memory of the devoted Kashmiris he was fast assuming the stature of a saint."

Here we have a report, again from a distinguished American photographic journalist, Margaret Bourke-White, and I will quote a little from her book *Half-way to Freedom* :

"He, Mir Maqbool Sherwani, must have been a sort of Robin Hood character from the stories the townspeople told me, championing peasants who could not pay their exorbitant taxes, pitching into the police when he found them beating up some luckless victim, bolstering the resistance of the people against their many oppressions. When the tribesmen invaded Kashmir and terrorized the countryside, Sherwani, who knew every footpath in the valley, began working behind the lines, keeping up the morale of the besieged villagers, urging them to resist and to stick together regardless of whether they were Hindus, Sikhs, or Muslims, assuring them that help from the Indian Army and People's Militia was on the way. Three times, by skilfully planted rumours he decoyed bands of tribesmen and got them surrounded and captured by the Indian infantry. But the fourth time he was captured himself."

This is perhaps the occasion here to say, in reference to the Indian Army and to the pushing back at Baramulla and so on that, as a matter of historical fact, the first resistance to the tribesmen, to the raiders, to the Pakistanis who came in, did not come from the Indian Army. They were a longtime in coming because the accession had not taken place and when it did they had to be shipped over. But the unclad, half-starved

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men, women and children of Kashmir, with nothing to help them but bare arms and bamboo sticks—they were the people who felt the call of their soil and rallied to the defence of their country and their fellow beings. They were the people who offered the first resistance, so that when people speak of liberation or co-religionism, or whatever it is, let us remember that they were the people who offered the first resistance to the ferocious invasion that came along. Soon afterwards came the Army of India, at a time when partition had divided practically every unit. There was not a single unbroken unit in the Army of India at that time, because the soldiers had been allowed to opt for one State or the other, Gandhi was alive at that time. I say this because it is now fashionable to speak about the image of India, and even if you beat us black and blue we shall take it. Gandhi was alive at that time, and the Prime Minister records that in the anguish of his heart at the fact that so soon after independence his country should be involved in war, he went to him for counsel. Gandhi, than whom no greater man of peace even lived, said : "Your duty is to repel the invasion"; and the Army went in. We are not relying on the authority of a great man who is no longer with us, but this should be known to the world.

I have no desire to recount atrocities in this way, but in the whole tale of the invasion of Kashmir, until it became more or less a regular war, it was the forces of India—not by superiority of numbers or even by superiority of equipment, because we had the same, what the British left us—which rolled back the invasion and—after coming to the Security Council here, not under compulsion as some people think, but because of the desire of the Government and the people of India—which stopped the bloodshed.

What about the cease-fire ? It was not an army in retreat, but an army belonging to a country and a Government that placed its reliance on the United Nations and which continues to do, an army which regards the sanctity of life even of its opponents who had invaded the territory, which repelled the

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army which invaded the territory and brought about acessation of fighting.

That brings me to the next stage of the observations of Sir Muhammad. As we were told, the resolutions of 13 August 1948 and 5 January 1949 form a landmark to use as a starting point of the argument that under those resolutions we had made certain promises and given certain undertakings, and things of that character. Then, it was once said that Pakistan was not bound by international obligations. I was told at that time that Krishna Menon is like the young man who said to his priest, "The Koran says do not go to prayer." I was told that I had quoted only half, and then the representative of Pakistan said that what the Koran really said was "Do not go to prayer when you are in a state of drunkenness." I am not a student of the Koran, but I happen to have some familiarity with it and so I looked up the passage. What it said was, "Do not go to prayer when you are in a state of drunkenness ; wait until you have sobered down and have humility in your heart."

So we come to these resolutions, and even at the risk of trying your patience, the resolution of 13 August 1948 was accepted by India long before it was accepted by Pakistan. It was discussed with us : obviously it was a compromise in the sense that any resolution we needed to accept was one calling upon Pakistan to vacate its aggression. In spite of that, we agreed to certain things, first of all I want to put to you the format of the resolution. It is in three parts, and of those three parts each follows from the other. Part I deals with the cease-fire and certain things that follow from it, then comes part II with three sections, A, B and C, then comes part III.

Part I of the resolution, it is our submission, has not been implemented. Sir Muhammad said yesterday that the Commission had said part I had been implemented ; but I think it is necessary to look at the date when the Commission said this and at what happened afterwards. Part I of the resolution is this :

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"*Cease-fire order*

"A. The Governments of India and Pakistan agree that their respective High Commands will issue separately and simultaneously a cease-fire order to apply to all forces under their control in the State of Jammu and Kashmir as of the earliest practicable date or dates to be mutually agreed upon within four days after these proposals have been accepted by both Governments."

Now there is a cease-fire. We will not go into the question of who it was that fired first or last : that does not matter. There is a cease-fire. Afterwards our officers went to Karachi and drew certain demarcations, and so forth and the cease-fire had been established.

Now we come to the following paragraph of part I :

"B. The High Commands of the Indian and Pakistan forces agree to refrain from taking any measures that might augment the military potential of the forces under their control....."

That is to say, this is an elaboration of the Council resolution of 21 April 1948. When the Commission said that part I had been implemented, it was the thinking in terms of the cease-fire being implemented, and that time it was not aware that the augmentation of these forces was taking place. It is known on the evidence of Pakistan authorities themselves that there was a considerable increase in the military potential, and not only in Jammu and Kashmir. There is evidence both from their own sources and from elsewhere of the construction of additional military bases along the western border of Jammu and Kashmir—one at Kharian, built with United States military aid, where the Pakistan Armoured Division is stationed, and another, the cantonment at Domel, which was opened in September 196. : further construction and extension of airfields and airfield controls at Skardu, Gilgit and Askardas, south-west of Hunza, and one

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near Mangla : the construction of strategic roads and bridges to ensure safe lines of communication ; the construction of an all-weather road from Swat to Gilgit, along the Indus, several sections of which have already been completed. Important weapons have been procured by Pakistan, but I will not go into the details concerning them, for other reasons. I am, in a certain sense, to a degree restrained ; I do not want to spread this out further than need be.

In spite of the fact that India's total area is nearly four times that of Pakistan, its population about five times that of Pakistan, with a land frontier of 8,500 miles and a coastline of 3,500 miles, the proportion of defence expenditures to both the total revenue and the national income is much less than that of Pakistan. India's total defence expenditure, on both revenue and capital accounts—I am not talking about this year ; but last year's budget—and that of the last six years—the budget is before Parliament now, so I cannot include this year—has been on an average of 32 per cent of its total central revenues and about 18·6 per cent of the total central and states revenues. On the other hand, Pakistan's defence expenditures, including the cost of military equipment receieved through foreign military aid, during the same period, has been on the average 55.7 per cent of its total revenues and 35 per cent of central and states revenues. On the basis of the national income of the two countries also, it can be seen that Pakistan has been spending, in comparison to India, much more on defence. In 1960-61 the national income of Pakistan was estimated at $4,520 million. The defence expenditure was $240 million, forming 4.6 per cent of the National income. In the same year the national income of India was estimated at $28,400 million and the defence expenditure at $560 million, making about 2.2 per cent of its national.

So this is the position regarding the military balance between the two countries. But we are not dealing with that only. Soon after the cease-fire Pakistan occupied this area. As I said a while ago, its armies were recognized. We hear about the ' "Azad' forces", the "Azad' battalions", the "over-all com-

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mand"—in other words, a general military occupation where the United Nations Commission had talked only about local authorities maintaining law and order and, where their forces were not sufficient, of calling upon the Indian Government to provide them, The United Nations resolution – I read it to you— and the assurances given said that the Government of India was to garrison and guard the routes in Gilgit and the northern areas. We were told by the Commission that there was no evidence of the Pakistan Army or of anybody else having any command over these northern areas, so-called : but now they are part of the territories of Pakistan by forceful occupation.

Now we come to paragraph E of part I of the resolution of 13 August :

> "E. The Government of India and the Government of Pakistan agree to appeal to their respective peoples to assist in creating and maintaining an atmosphere favourable to the promotion of further negotiations."

I am free to confess that there are newspapers in India – if you call them newspapers - though sometimes they are not as restrained as are some others. They are usually quoted by Pakistan and by certain others, but we do not read them very much in India, I get a free copy ; a paper usually attacks me, and therefore they send me a free copy. But during the whole of this period it was an article of faith in Pakistan to indulge in what is called a "jehad", that is a holy war, against India, and that holy-war compaign went on over the radio, in the Press and everywhere else. Therefore, psychological warfare was going on at that time. But even aside from that tangible factor, the fact was that the position as a cease-fire on the basis of which the Council said that part I was implemented, did not obtain. We should have remembered when seriously discussing this that all of these arrangements were thought of in this connexion : a cease-fire today : in a few weeks' time, in a few days' time, may be, a demarcation ; a few days afterward, negotiations, a truce ; and then the whole thing will be over in a year's time.

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It is now twelve years after that. Our contention—we put it forward in 1957—is that part I of this agreement has not been implemented. Until part I is implemented, and as long as Pakistan doet not withdraw those forces which it has augmented—that is withdraw the entire forces—from that area, part II does not come into operation. Sir Muhammad claimed yesterday that there could be question going any further because part II refers to a truce agreement, and that a truce agreement has not been brought about. When I heard that I was really taken aback. I did not know what it was all about. Part II does refer to a truce agreement but it does not say that part II should be put into operation after the truce. Part I is the cease-fire : part II is the truce agreement. Now, that puts a different complexion on the matter. If part I said there must be a truce for Part II to become operative, then what the representative of Pakistan said might be true. But part I prescribes the cease-fire, with the adjuration not to augment forces ; and part II reflects the truce agreement, the plans of the truce agreement. And what are they ?

Section A, paragraph 1, states :

> "1. As the presence of troops of Pakistan in the territory of the State of Jammu and Kashmir"—these are not my words : they are the words of the resolution—"constitutes a material change in the situation since it was represented by the Government of Pakistan before the Security Council, the Government of Pakistan agrees to withdraw its troops from the State."

Is there anyone in Pakistan or anywhere else who would say that today the same troops are not there, after twelve years, and that they have not been augmented—not only that they have not been augmented, but that the quality of their equipment has not been improved ? And there are other circumstances which will be dealt with later.

Paragraph 2 reads :

> "2. The Government of Pakistan will use its best endea-

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vour to secure the withdrawal from the State of Jammu and Kashmir of tribesmen and Pakistan nationals not normally resident therein who have entered the State for the purpose of fighting."

This also has not been implemented.

Paragraph 3 reads :

"3. Pending a final solution, the territory evacuated by the Pakistan troops will be administered by the local authorities under the surveillance of the Commission."

First of all, the evacuation has not taken place ; it is an occupied area. The local authorities no longer administer in this area. There is the so-called "Azad" Government, which is under the Ministry of Kashmir Affairs in the Pakistan Government. The Secretary-General, or somebody, gives orders. This is a kind of colony of the Pakistan Government. Therefore no local authorities entered into the concept at the time these resolutions were drafted. The sovereignty was that of the Union, and we simply agreed to the local auhtority as a *de lacto* matter ; they were there, and when you want order maintained you give them assistance. So we submit that none of part I and section A of part II and III have been implemented, and it is only when part I has been implemented that the whole question of part II arises. But even assuming for the moment that part I, for agreement's sake—I say for agreement's sake and I hope you will notice it because afterwards it should not be said that the Indian representative has said that it has been implemented—has been implemented, even then until part II, A, is implemented, part II, B, does not come into operation. That is how it is constructed and part III, B, states :

"1. When the Commission shall have notified the Government of India that the tribesmen and Pakistan nationals referred to in part IIs A, 2 hereof have withdrawn, thereby terminating the situation which was represented by the Government of India to the Security

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> Council.....that the Pakistan forces are being withdrawn from the State of Jammu and Kashmir, the Government of India agrees to begin to withdraw the bulk of its forces from that State in stages to be agreed upon with the Commission."

The next paragraph, paragraph 2, states that "the Indian Government will maintain within the lines"—and I will ask you to note the plural, there were lines of resistance and lines of action and so on—"existing at the moment of the cease-fire those forces of its Army which in agreement with the Commission are considered necessary to assist the local authorities in the observance of law and order....."

Where in this is the sovereignty of Pakistan or any title of Pakistan to be in the territory of Kashmir ? Then we are told that we have not implemented, that we have not withdrawn this, that or the other. Our submission, first of all, is that all of paragraph 1 has not been implemented, it has been unimplemented by the introduction of more forces, more air-fields, by occupation, by keeping the illegal accession of Hunza and Nagar and all these places, and, what is more by the generalization of the position of "Azad" as a kind of State which, under the assurance that was given to us, ought never to be.

If part I had been implemented and section A of part II had been implemented, then the obligation would have fallen upon the Government after notification by the Commission ; but no commission has notified us so far that this has been done—how could it ? Then it is up to us to withdraw the bulk of our troops. It states in part II, B, paragraph 1, that :

> "The Government of India agrees to begin to withdraw the bulk of its forces from that State in stages to be agreed upon with the Commission."

Here I want to say, and I tell you with some knowledge of this matter for I have some responsibility for it—perhaps I should not say it for security reason—that there is not in

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the territory of Kashmir the components of the Indian Army that are permitted under the cease-fire agreement. We are still under strength because we are not a country that wants to build up a large army. There are other reasons why there should be more people in Kashmir than forces. For those reasons we take the steps that are required.

Then comes the part III of this resolution upon which a great deal of play has been made, about a thing called the plebiscite. Part III states :

> "The Government of India and the Government of Pakistan reaffirm their wish that the future status of the State of Jammu and Kashmir shall be determined in accordance with the will of the people and to that end, upon acceptance of the truce agreement, both Governments agree to enter into consultations with the Commission to determine fair and equitable conditions..."

There is no question of our entering into consultations with them. If these two are implemented, then we will go to the Commission and say, "What should be done about it ?". It is from this part III that the resolution of 5 January 1949 arises.

I want to submit to you that the 5 January resolution is more a plan, that is to say, that if all this has been implemented, and if after all consultations of the Commission something has to be done about it, then it was suggested that this should be tried. There has been no commitment at any time by the Government that it should be tried. There has been no commitment at any time by the Government of India that they would hold a plebiscite in Kashmir. A plebiscite has been discussed, it is part of the plan. In any case, it would become operable after parts I, II and III of the agreement had been implemented ; but they have not been implemented.

Now we come to this question of the plebiscite. First of

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all; I say that whatever Lord Mountbatten might have written about the wishes of the people, what the Prime Minister has said, what other people have been quoted as saying, in part or in whole, they do not necessarily mean a plebiscite. Yet the plebiscite idea came in to the forefront with the principle of self-determination during the First World War. At the Peace Conference of 1919 the American technical experts were: "almost without exception, opposed to the use of plebiscites, recognizing the weakness of any definite solution which they might recommend but believing that it was better that the decision taken should be definite and immediate rather than involve the delay that would follow on a plebiscite".

The Italian delegation was very concerned about this and they were anxious to avoid general acceptance of the plebiscite principle and this came out plainly in the peace negotiations.

In the British Foreign Office, the great expert on these matters, whom we follow with great respect said in a pamphlet in 1920 :

> The Italians themselves deride the plebiscite as the clumsiest of devices for ascertaining the will of the people. A plebiscite, if it does not yield an overwhelming majority one way or the other, is worse than useless ; for it serves only to emphasize the division of opinion among the people, and to open the way for intrigue, perhaps for civil war.
>
> "But it is seldom that an annexation plebiscite can be taken on so simple an issue. When the question is one of uniting several fragments of a nation in a single State, there must always arise a further question of the constitution to be adopted ; and this can never be simple."

This is from one of the official British Foreign Office *Peace Handbooks.*

Then we come to France. In regard to the annexation of Avignon to France, Mattern state that Pope Pius VI sent a pro-

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test to the Catholic Powers of Europe, opposing the incorporation "as a manifest violation of the law of nations" condemning the revolutionary character of the theories involved in such plebiscites and expressing criticism of the result of the votes.

The United States of America, with all of its constitutional history, has been one of the opponents of the plebiscite. In the United States the consent of the inhabitants of the territories annexed need not and has not been asked. The act of annexation derives its legal force "from the body which enacts it, and it would be an error to hold its legal force necessarily dependent upon a consent obtained from some other source .." There is, according to the same authority, no reason why Congress could not make an annexation dependent upon the consent of the population of the territory to be annexed—that is what may be stretched out in our case—"but this is not a matter of legal necessity. Nor is there any principle of public law, or general precedent from our own practice'.—that is, of American practice—"that requires the consent of the population of an annexed territory to be obtained. In none of the instances except that of Texas, has the United States deemed this consent necessary".

The British Government's attitude in this question of popular consent is found in the statement made in the House of Lords by the Prime Minister and Secretary of State for Foreign Affairs, the Marquis of Salisbury. The Marquis of Salisbury said on 19 June 1890 :

> "The plebiscite is not among the traditions of the country. We have not taken a plebiscite, and I see no necessity for doing so..."

The international authority, Professor Mattern had said :

> "While the plebiscite has been considered in its international aspects by a long list of commentators, of advocates and opponents, the institution has, nevertheless, formed little space in our standard text books of international law. The prevailing opinion expressed before the World War was to the effect that the rules governing the inter-

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course of States do neither demand nor recognize the universal application of the plebiscite in the determination of sovereignty. W.E. Hall, for instance, speaks of the idea that exercise of the right of alienation is subject to the tacit or express consent of the population inhabiting the territory intended to be alienated,' as a misapprehension."

I could read a great deal about this. On the present position under constitutional law, Professor Mattern had said :

"No State can, at the present time, from the point of view of constitutional law recognize the right of secession founded upon the principle of selfdetermination..."

This is not in opposition to the general principle of self-determination, that is, of unity inside a State, Professor Mattern continues :

"By doing so it would invite its own destruction. For in every modern State there may be found, at one time or other, groups sufficiently dissatisfied with the conduct of the majority or of a ruling minority to demand a release from their allegiance..."

If the argument is that the Government of Pakistan does not think that the people of Kashmir want to be in the Union of India and, therefore, cannot be, I would cite the instance of the United States as regards the annexation of Hawaii. The Japanese said that they should not go there. That did not prevent Hawaii from becoming part of the United States. Instances of this kind can be multiplied.

Then we come to the whole question of the plebiscite idea, I hope Sir Mahammad will bear with me, I do not think that there is anything national or personal in this matter. The whole idea of the plebiscite —I do not mean in that form—or consultation or whatever it was, arose from our own background of parliamentary institutions with all its limitations, and our entering a new form of democratic government. Here we

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are told by a country that has not known an election for twenty-five years that we should take a plebiscite. I will come to that in a minute.

But, over and above that, if it had been taken then and there, if conditions could have been restored—that is if there could have been not only the withdrawal of all these people but also the restoration of the composition of the population—and if various other economic and similar circumstances had entered into it, than there would have been something to say for it. However, with the change of circumstances—and I shall quote the authority for this afterwards—a situation has arisen-where this just is not so. That is to say, apart from all commitments which we deny, there is no question. Then you may well ask. "What consent have you got ?" Our answar is that the only party that is preventing the assessment of the opinion of the Kashmiri people is the Pakistan Government.

There have been free elections in Kashmir since the passing of that resolution. Sir Muhammad derided elections in Kashmir, and I noticed a degree of approving titter going round the Council. We were told that in Kashmir people did not know whether the ballot boxes were right side up or upside down. I wonder whether anybody in Pakistan has seen a ballot box. How could they know which side was up ? But I am not going to let this occasion pass with its misrepresentation not only of the Union of India but also of its fundanmental institions. I would say to Governor Stevenson that not even in his country is there electoral machinery where the law and the constitution provide the safeguards against it. Our Electoral Commission is entirely outside the competence of grvernment, and Kashmir is under the Electoral Commission. We have no more authority over the Electoral Commission than over a high court judge, and step by step Kashmir is now under the Electoral Commission.

A great deal of play was made—because it was thought other people would not have the facts probably—about people being returned unopposed. If people were opposed then we

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would be told, "Oh, they got in on a split vote". If they are not opposed, then they say it is submission. As Gladstone said, if the people protest, that is bad; if the people do not protest then they are silent; and in eather case the people are wrong.

So, what is the possition? In 1934, long before all this came about, elections to the Assembly were held commounity-wise - that is to say, by communal representation. We call it in India Muslim seats and Muslim voters, and so on and so on. And then there is the Maharajah's Government. It reminds me of the kind of parliament we had in India also - not completely responsible, but some sort of representative assembly. As I say, elections to the Assembly were held community-wise in 1934. The Muslim Conference—that was the ancestor to the National Conference, which was based in the beginning on a kind of Muslim nationalism—won nine seats without contest. It is to be supposed that they were not representative? And, mind you, this was the time when the Maharajah's Government was in existence—the Government about which we hear a great deal the other way. In 1938 the same Muslim Conference won nineteen seats out of twenty-one Muslim seats and lost the other two only on technical grounds.

Then we come to the time nearer independence—1946. By that time the original kind of religious nationalism had converted into national nationalism. The Conference had become the National Conference. It had become the parallel to the Congress in India. The Muslim Conference, as I say, was converted into a National Conference reprenseting all communities. The ruler - that is the Maharajah—swooped down on this new party, suppressed civil liberties and stages farcical elections. The National Conferenee boycotted them and appealed to the electorate not to cast its votes. Only 8 per cent of the electorate voted. Are we to say that that also was a kind of unconstitutional action where everybody was just being obedient because the national movement was able to get a boycott established?

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Then came 1951—that is, after accession. In 1951, for forty-three seats out of forty-five in the Valley of Kashmir the election was unopposed, the two opposition candidates refusing to face the electoral contest. Undeniably this result was due to the Pakistan invasion and the atrocities committitted by Pakistan regulars and irregulars, and the widespread popularity of the National Conference. When you have an armed opponent on your frontier, it does create unity of the parties within. In many countries, including the United Kingdom, there may be even prolongation of Parliament and suspension of elections. All kinds of things can take place. But to say that in 1951 forty-three seats out of forty-five were unopposed in the Valley does not imply that the National Conference observed some kind of farcical election.

In 1957—and this was reference to—twenty-three candidates were returned unopposed, ten candidates withdrew and the nomination papers of ten were rejected on technical grounds. That happens in India all the time because there are so many formalities to be complied with. The Election Tribunal is very strict on the low, and if you do not sign in the proper place the paper goes out. Thirty-two seats, on the other hand, were contested, with ninety candidates in the field. We did not hear about that—thirty-two seats contested, with ninety candidates in the field. Four political participated, and in addition there were twenty-four independent candidates. That does not look like a Hitlerian election, does it? What is more, there are fifty-four newspapers in the Indian-administered part of Kashmir, apart from all the other methods of propaganda. Some opposition candidates won against the ruling party's nominces. That also was not mentioned.

Here is a comment from the *Manchester Guardian*—not a paper which is very friendly to India. The *Manchester Guardian* published on 20 April 1957 said :

> "...the Jammu elections are a great and quite a genuine victory for the National Conference.

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> "Elections in Kashmir are over. In Jammu, the National Conference was given a tough fight by the Hindu Praja Parishad, and all but five of the seats were contested. After strenuous canvassing and election fever, equalled only in India's most advanced parts, the National Conference won two-thirds of the seats ...
>
> "...over 70 per cent of the electorate turned out woman, men and elders, in spite of battering rains ."

There is no law for compulsory election in Kashmir, as in Australia. Seventy per cent turned out, and this is not peculiar to Kashmir. There are constituencies in India where every vote is polled. The newspaper continued :

> "In the Kashmir Valley elections are over too—expect for two seats, one in the Buddhist Ladakh and the other in Deda. Of the eight seats that were contested the National Conference won seven and the tnrn-out was as high as 50 per cent in spite of the differences and slushy mud ..
>
> "The National Conference would have probably won more of the seats in the Valley had there been a contest.
>
> "What has surprised everyone in India is the large number of people who have taken part in the elections both in Jammu and in Kashmir..."

Now we come to 1961. Thirty-four candidates were returned unopposed. That was referred to by Sir Muhammad yesterday. But thirty-nine seates were contested. The total votes polled were 683, 929. That is a very large proportion of the electorate in Kashmir, which has a population of some 3.5 million and a voting population of somewhere about 1,250,000, speaking from memory. Seven political parties participated. There were thirty-five independent candidates. The National Conference won thirty-four seats. Now no ruling party can have,as it were, a command oppossition. Is it part of its obliga-

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tion to see that an opponent wins ? That would be a funny kind of election, would it not ?

The opposition parties first demanded that the elections should be conducted simultaneously with those in the rest of India. The Kashmir Government ruling party tells the Election Commission, "Have the election some other time" but the Election Commission decides otherwise ; and that is the law. Subsequently the opposition parties changed their mind and asked for a postponement. The Election Commissioner turned that down also. That is to say, he did not care about one party or the other.

On the eve of the polling in Jammu the opposition party asked for postponement on the plea of having discovered defects in the ballot boxes. The ballot boxes had been supplied by the Election Commissioner of India. Now these boxes that according to Sir Muhammad, are put upside down, did not come from Jammu. They had been supplied by the Election Commissioner himself—he has his own administration—and the state government had nothing to do with this. The Election Commissioner laid down procedures for triple safeguard of the ballot boxes and instructions were issued accordingly to all returning and presiding officers. No complaints of non-compliance with those instructions or of tampering with ballot boxes were received by the Election Commissioner. In spite of an appeal issued by the Plebiscite Front—that is the Pakistan-sponsored party - for the boycott of the elections, there was heavy polling. As for unopposed returns, the National Conference has not so far found any serious rival to its position and prestige. Since the introduction of popular government this party has been engaged in raising living standards by planned development, and so on.

So when we speak about farcical elections in Kashmir, we have to bear in mind, first of all, that these elections are conducted in the same way as in the rest of India—which, even our opponents say is the largest democracy in the world conducting elections peacefully. There under the Election Commissioner anyone has the right to contest a result. There will be appli-

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cations of all kinds. All of us are open, even after majority victories, to the fear of there being a contest. Anyone can contest an election in India. They can go to the Supreme Court —they can go any where.

It would not in any way be an argument to say that things are worse in Pakistan or anywhere else, because two wrongs can never make a right. But on the basis of the thing itself—and I have pointed out how the elections are conducted—I would not have gone into so much detail except that statements have been made in the Security Council which I cannot allow to pass uncontested.

On the other hand, all this argument regarding the ascertainment of opinion and elections would have substance only if the party demanding it believed in elections. A claimant must come to a tribunal with clean hands. In the entire State of Pakistan, with a population of nearly 90 million, there are only 80,000 electors under the electoral law just promulgated by its President. There are only 80,000 electors who get their posts as a result of five years of indirect election. They have there what is called a basic democracy; we have in India a system of democracy that is basic—some slight difference. According to the *Baltimore Sun* the basic democracy system,

> " . is a five-tiered structure of councils from the local level up to the provincial development advisory councils, one for West Pakistan and one for East Pakistan.
>
> "The idea is based on the theory that the Pakistanis are not ready for fully representative democracy and need a system suited to their genius."

May I say something here about the reference to West Pakistan, East Pakistan and all that. We hear a great deal about the right of a population to choose the form and structure of its government. One might well ask how the North-West Province of Pakistan disappeared; what problems the tribesmen who are supposed to be patriots have: were they absorbed into the rest of Pakistan with their consent?

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Reference was made to the people in gaol. There are today 20,000 Pakistanis in Pakistan gaols. There is no civil liberty in Pakistan. The people live under martial law. And who are they to tell us about liberty?

Pakistan expects unequivocal support from the United States Government and its people on the vital question of Kashmir. There is no objection to expecting. "Our country consists of soldiers:" says the President of 'Azad' Kashmir, "all we need is money and weapons to turn Kashmir into a new Algeria". What a hope! I am not looking at Mr. Stevenson when I say "money", but that is the usual thing to do. He says: "Our country consists of soldiers; all we need is money and weapons to turn Kashmir into a new Algeria". In other words, it is an invitation to other people to come and make civil war in this area.

The Foreign Minister says, "Even oriental patience has its limits". The representative of Pakistan says, "So far, India has been our menace". And this is the country with whom we are negotiating.

Said the President of Pakistan, according to the *Chicago Daily News* on 16 April of this year: "My hope and prayer is that we can run without political parties". And the President of Pakistan is of course a fervent believer in prayer. That is the very same country whose representative tells us that only one party won in the election.

The *Manchester Guardian*, on 17 April of this year, said:

> "The more prudent among the 'opposition' candidates in West Pakistan do not think it wise to challenge the Government too fiercely during the first Parliament. They know that the President has them covered - not only by the arms he has provided himself within the Constitution but by the power of the army itself. It can abolish the new Constitution as it abolished the last, and the President himself has mentioned this possibility."

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When Baluchistan, which is part of Pakistan wanted to become a part of India, we did not encourage it. *The Manchester Guardian* on 24 April 1962 said:

> "Baluchistan, this sometimes austerely beautiful country which politically is part of Pakistan, seems to have been destined throughout the five thousand years or so of its history and prehistory to be a limbo.
>
> "This is one facet of the problem of Baluchistan and an important one. There is not just one minority, but there are many. Until recently there were still petty States. There was no democracy, as we know it, but a certain devolution of authority to tribal sardars and from them to village headmen and the fact that these latter were fairly close to their people gave the Khan of Kalat some reason to feel that he could speak with authority for that part .. Now all that is gone and something closely akin to British colonial rule has taken its place. However dedicated these commissioners, and the rest of the imposed hierarchy may be, they cannot, with only short periods of duty in Baluchistan, be expected to identify themselves with the people...The administration is typical of good colonial rule and there is a wide gulf between it and the people."

Of course, one cannot expect the *Manchester Guardian* to say that colonial rule is not good.

> "These freedoms, however, are becoming things of the past"—that is, in relation to other parts of Pakistan—"and the law of Pakistan is replacing their tribal laws. Tribal law was formerly administered by the sardars whose powers were seldom questioned. Now these powers have been taken away from them."

In other words, in place of a tribal democracy it has become a bureaucracy, and that is the kind of quarter from which the demand for a plebiscite is made.

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I shall quote from the *Globe and Mail* of Toronto, Canada.

> "It must be said in fairness that Pakistan's own record is a dubious one. The tribal attack on Kashmir in 1947 was well organized and prepared beforehand by the arousal of tribal feeling by north-west frontier political leaders. If the Pakistan Government did not prompt the invasion, which is open to question, it did nothing to prevent it. Today the Pakistan area known as 'Azad' (free) Kashmir"—names do not mean anything; you can call a man with a weak arm "Armstrong"—"is closed to visitors".

Why, there are 70,000 visitors a year in Srinagar, including large numbers of nationals of countries ideologically opposed to each other, and perhaps to us.

> "President Khurshid is the former secretary of the late Mohammed Ali Jinnah. He said recently that his forces would succeed in 'liberating every inch of Kashmir', a threat that India could hardly ignore".

This talk of war came from everywhere, from small people and big people alike.

The *Civil and Military Gazette of Lahore* stated:

> "The Minister for External Affairs, Mr. Manzur Qadir, expressed the view in Lahore yesterday, that a referendum on the new Constitution would have served no useful purpose because the masses, having an overwhelming percentage of illiteracy, were not in a position to give a correct verdict on an intricate problem like the Constitution."

If it would serve no useful purpose, I should like to know how a plebiscite in "Azad" Kashmir can serve a useful purpose.

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Then there was a statement in the *Morning News* of Dacca on 6 April 1962, as follows:

> "We feel that if universal franchise is given, the Communists, or any other group hostile to Pakistan, would find it much easier to exploit the ignorance of the masses to our disadvantage..."

In other words, if you have a head, you are likely to have a headache: therefore, cut if off.

From the publication *Dawn* of 8 April 1962:

> "President Mohammad Ayub Khan warned Pakistanis here today that a bloody revolution would overtake the country within six months if a parliamentary type of government was to be revived.
>
> "The President said this revolution"—meaning his own revolution—"would not be like 'my revolution' which he pointed out, had been noble benign and bloodless'..."

When did a revolutionary ever say that he is not benign? The argument is: I don't mind autocracy, as long as I am the autocrat.

> "The President said he did not think Pakistan had reached, a stage of development and maturity where it could fruitfully run a parliamentary system based on political parties .."
>
> I am quoting this: I will not say it.
>
> "The President said he thought the country should do without the luxury of political parties if it could."

In the 28 April elections in Pakistan only 80,000 people, out of a population of 90 million, were eligible to vote. The political parties were not allowed to contest elections, as they have been banned. Latest reports state that no member of any of the minority communities has been able to win a seat. A

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Christian leader who contested a seat in a constituency in Lahore was hopelessly defeated. He secured less than half a dozen votes in a constituency of 609. No woman has been elected to the National Assembly from a general seat, though six seats are reserved for women. No seats are reserved for minorities.

I read all this out not because I have any business to comment on the system of government that they should have. That is their business. We do not criticize that. But when it is and that this medicine is good for other people, when somebody prescribes it, then we want to know what they think of it themselves.

What I am trying to submit is this: that this argument about plebiscites, about consultation of peoples, about freedom, about this, that and the other, is spurious; it has no reality; it is not substantiated by facts. And add to this the question that, every time a President of so-called "Azad" Kashmir shows some independence, out he goes. There is no civil liberty of any kind in "Azad" Kashmir. There are no meetings, no newspapers, no expression of opinion of any kind.

The Pakistan Government's systematic enslavement of the people in the Indian Union territory of Jammu and Kashmir, which is occupied by force, is described in authentic terms by "Azad" Kashmir leaders in a memorandum which was submitted to the Pakistan Constituent Assembly and which now forms part of the Security Council records. I submitted it in 1957. According to this document, there is no legislature, no independent judiciary, in this territory, and there are no civil liberties.

May I say in this connexion that some reference was made to the judiciary in Kashmir. I shall have to talk about it later. But the judiciary in Kashmir is part of the judiciary of the Union, in the sense that it is, by and large, under the original jurisdiction of the Supreme Court of India. The rule of law applies and, whatever changes there were in the transition period have been gradually eliminated. The

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judiciary in Kashmir – the high judiciary, the high court—is independent of the executive.

Newspapers in Pakistan testify to the degradation to which the unfortunate people are being subjected by the puppet regime foisted upon them by Pakistan. The administration in "Azad" Kashmir is run by the Minister of Kashmir Affairs in Karachi—now in Rawalpindi. I suppose. The so-called President of Pakistan-occupied Kashmir is a puppet, with little or no power to frame policies. The sanction of the Ministry of Kashmir Affairs is required for the legislation and enactment of statutory rules. All appointments, all questions of general policy, budget, internal security, all matters involving financial commitments, alienation of State property, public debts, loans, forest schemes, all important matters relating to civil supplies and rehabilitation—all have to have the consent of the official in Karachi. I will not read the rest.

From time to time, the disaffection of the people against the local administration of government has found violent expression. In the summer of 1954, when the Pakistan Minister of Kashmir Affairs was addressing a gathering, serious disturbance broke out. That is old history; I won't go into that.

The following news expressed by independent observers throw a significant light on the wretched conditions in which the people live under the Pakistan bayonets:

> "It is a slur on the forehead of Pakistan that, even after nine, years, we have not been able to set up a model administration in 'Azad' Kashmir. It might have saved us from hearing taunts across the border that 'You have chained the Kashmir is in poverty, slavery and ignorance'. Moreover, we are also witnesses to the efforts the Government of India has made to uplift the people of Kashmir. The situation prevailing generally in Pakistan, and particularly in 'Azad' Kashmir, would naturally raise doubts in the minds of a Kashmir Muslim that, when

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Pakistan has failed in 'Azad' Kashmir, how can she function better if the whole of Kashmir rejoins her?"

That is a very normal question. It appears in a Pakistan paper in Lahore. It speaks well for the liberty that exists in Pakistan that this can be published. I do not know what happened to the editor afterward.

"Pakistan leaders have been using the issue as a means to prolong their stay in power" said a leader in Pakistan-occupied Kashmir in the inaugural address at the Muslim Conference Convention.

Another paper in Lahore says:

"Azad' Kashmir is on the cross-roads between dictatorship and democracy, intrigue and fair play. Not that there have been no changes in 'Azad' Kashmir in these years. In fact the changes have been more than necessary, but they have unfortunately been changes for the worse.

"The 'Azad' Kashmir, officially stated to have a population of 1 million and a territory of 5,000 square miles, functions on the surface as a separate State. The area has its own provisional President and its own flag. But Pakistan, whose military authorities command the 'Azad' Kashmir army, is the real force here.

"The decisions for the formation of all governments installed in 'Azad' Kashmir during the last ten years were taken in Karachi. They were all undemocratic and were forced upon the masses from Karachi. These Governments were against the claims of Pakistan that she wanted to achieve the right of self-determination for the Kashmir..."

For "Karachi", we must now substitute "Rawalpindi".

"The way democracy has been trampled underfoot for ten years in the area called 'Azad' Kashmir has tarnished

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Pakistan's reputation, and 'Azad' Kashmir is an area over which India has no control. India has never placed hurdles in democratizing the administration in this region, in forming a popular government, and in enabling the people to exercise their right of self-determination. All this could be done by Pakistan."

This, again, is one of their papers. I don't know—do you want me to more any more? There are many more expressions of opinion of this kind, mostly from their own people, on conditions that obtain. I will not tire the Council with reading any more of this.

Then we come to this question: It has been said that the Indian-administered area of Kashmir is exploited for the purposes of the Union, is governed by an army—and I tell you, with a personal responsibility for this, that the Indian Army does not interfere in the civil life of Kashmir. They are liked in the area. They have their own arrangements about residence. They do not interfere with the civil life. Our army does not interfere in our civil life. Civil government controls the military side in our Constitution. Soldiers do not govern our country.

As against this, I want to give the position on the other side. It is a natural question to ask: How are things on the other side? As reported in the statement by Ayub Khan, it may be that these people are so underdeveloped that they cannot be developed; they cannot develop themselves.

I will not read the whole of this table. I beg your permission however to introduce this document on the conditions in Indian-administered Kashmir as a Security Council document, and I will read part of it. The figures given below indicate the progress made by Jammu and Kashmir in the two five-year plans.

Here are the comparative figures for 1951 and 1961:

Investment: 25 million dollars and 67 million. That is an advance of 42 million in ten years.

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Revenue: 5.5 million dollars—and, today, 23.5 million. Taxation is high in India. Next to the United Kingdom, I suppose, we are the high-taxed people in the world. We pass on the benefits to Kashmir also.

State income, in 1955-56 prices: in 1951, 100 million dollars: today, 160 million.

Food production: 300,0000 tons, increased to 500,000 tons.

Power potential: 4,360 kilowatts, increased to 16,000 kilowatts in ten years.

Roads per 100 square miles: 2.5 miles in 1951, and 40 miles today, in every 100-square-mile area.

Number of pupils in primary schools: in 1951, 65,000; today, 197,000.

Number of Higher secondary schools: 52 in 1951, and 262 today.

Literacy was 6.6 per cent, and is 12 per cent today.

In 1951, there were no students sent out of Kashmir for education, and today there are 3,179 students and abroad —in the United States, the Soviet Union, the United Kingdom and all sort of places.

The *per caput* expenditure on public health was, in 1951, 13 cents; and today, 76 cents.

The number of hospitals and dispensaries was 89: today, 349.

The average life expectancy at birth was 32 years in 1951, and 47 years today.

In other words, the Indian-administered area of Jammu

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and Kashmir is not a colony, like "Azad" Kashmir. It keeps pace with development.

Although I have made more notes about other things, I propose to try to wind up this matter as quickly as possible.

First of all, I submitted in 1957 that, irrespective of what interpretations may be put on certain resolutions and certain phraseology—with the exception of trying to inform the Council of what my Prime Minister has actually said, because my Prime Minister said that the Pakistan case here was based on falsehood—which practically meant something—this is an international forum. While you are not a judicial tribunal and have no right to pronounce on the legality of one thing or another, we are governed by conditions of international law in the world, and these conditions are governed by the well-known doctrine of *rebus sic stantibus*—that is to say, conditions having changed you have to take another view of these things.

Now what those changed conditions are I will enumerate at the end, but I have already put forward certain changed conditions in relation to these resolutions, namely, the change in the military strength; the conditions of suppression on the "Azad" side; and more than all that—I would like to submit to the Council - the only party that is preventing the free expression of opinion in "Azad" Kashmir is Pakistan, because under the Constitution of Kashmir those territories have constituencies. The people are free to elect their representatives, and II they have other decisions, why do they not elect them and send them to the Kashmir Assembly? They are entitled to elect them; they have not been put out; those seats are kept vacant. But if they do not express an opinion, it is because there are no elections. There is no expression of an opinion there, and if anybody says anything, out he goes. After all if the parent country is like that, how could anything be different.

Therefore, conditions have changed in the sense of economic advance, industrial advance, and the country being open-

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ed up in the way it is, with the spread of democracy in the institutions, the independence of our judiciary, the rule of law financial control, and all these things happening in the Union territory and our sovereignty still subsisting. On this question of sovereignty there has been no challenge from the United Nations, and I think it will be useful to quote the opinion expressed at that time, as submitted to the Security Council by the representative of the United States.

But over and above that, there never has been a challenge from the United Nations on the question of sovereignty. The whole of this resolution is based on the sovereignty of India because they make us responsible for security. You cannot make a country responsible for security when it has no authority, Mr. Warren Austin, the representative of the United States said:

> ". . .we must face the legal situation. The external sovereignty of Jammu and Kashmir is no longer under the control of the Maharajah. The external sovereignty of Jammu and Kashmir is the sovereignty that is involved here . . . with the accession of Jammu and Kashmir to India, this foreign sovereignty went over to India and is exercised by India, and that is how India happens to be here as a petitioner."

This is not a statement of my delegation.

Then, at a meeting of UNCIP on 17 August 1948 with the Prime Minister of India, the Prime Minister inquired whichever the 13 August 1948 resolution, the one to which I have been referring:

> ". . . envisaged any change in the status of the territory, or whether it recognized the jurisdiction of the Government of Jammu and Kashmir over that territory, Mr. Korbel remarked that that point out corporated the suggestion which the Prime Minister himself had advanced and that the phrase 'pending a final solution' was intended

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to recognize the temporary nature of the administration by local authorities"—

not the question of India, but the temporary nature of the administration by local authorities: it was intended at that time that these people should maintain local peace—

"Sovereignty over the territory was not to be changed."

In a letter dated 20 August 1948 from the Prime Minister of India to the Chairman of the Commission, the Prime Minister maintained:

"That, paragraph A, 3 of part II of the resolution"—which I read out a while ago—"should not be interpreted, or applied in practice, so as:

"(*a*) To bring into question the sovereignty of the Jammu and Kashmir Government over the portion of other territory evacuated by Pakistan troops:

"(*b*) To afford any recognition of the so-called 'Azad' Kashmir Government; or

"(*c*) To enable this territory to be consolidated in any way during the period of truce to the disadvantage of the State."

That is what I said, that it was imposible to perform part II even if part I had been performed, because the Pakistan Government had consolidated this area, bringing it under the particular section of their Constitution; and they have annexed it, received accession, stationed armies, built airfields, and placed them under the Kashmir territory altogether. The Prime Minister again inquired:

"If I understood you correctly, paragraph A, 3 of part II of the resolution does not envisage the creation of any of the conditions to which we have objected in paragraph 3 (1) of this letter. In fact, you made it clear that the

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Commission was not competent to recognize the sovereignty of any authority over the evacuated areas other than that of the Jammu and Kashmir Government."

And as Mr. Warren Austin pointed out, when the Maharajah disappears, that sovereignty goes to the Government of India.

In reply the Chairman said:

"The Commission requests me to convey to Your Excellency its view that the interpretation of the resolution as expressed in paragraph 4 of your letter coincides with its own interpretation, it being understood that as regards point (1) (*c*) the local people of the evacuated territory will have freedom of legitimate political activity. In this connexion, the term evacuated territory refers to those territories in the State of Jammu and Kashmir which are at present under the effective control of the Pakistan High Command."

Then reference was made by Mr. Muhammad Zafrulla Khan—I think it was yesterday or sometime before that—to the fact that any authority of the United Nations found anything which the Pakistan Government had not honoured, which was presumably against international law, they would honour it. Now I would like to make him a present of this: when the frontier of the State of Jammu and Kashmir was closed by hostile elements, it was contrary to international law, and when in 1948 units of the regular Pakistan forces moved into the territory of the State, that too was inconsistent with international law. That is fixed by Sir Owen Dixon. And then we have the following in the UNCIP Chairman's letter:

"Surveillance of territories of the State of Jammu and Kashmir other than those now occupied by the Pakistan Army and forces under its control is not provided for in the resolution"—then what right have they to go into the northern areas?—"The administration of such areas

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> remains under the jurisdiction of the Government of the State."

Now I come to the doctrine of *rebus sic stantibus*: "It is a well established principle of international law that a treaty ceases to be binding when the basic conditions upon which it is founded have essentially changed." This is the opinion given by the Attorney General tribunal has so far rejected the validity of this doctrine. Otherwise we would not have a dynamic international society.

The essence of this doctrine is that all treaties are concluded—and I am not for a moment saying it is a treaty: I am quite prepared to call it even an international agreement, a commitment, a resolution, or whatever you would like to call it, all those that would be binding on a much more rigid form of agreement—on the basis of a clouse concerning vital change of circumstances. It is inherent in the nature of law that performance is conditional, that no vital change of circumstance occurs; if they do, the State is not in a position to perform them physcally. This applies even to municipal law. For example, there is a rule about specific performance and if it becomes incapable of performance, you cannot enforce it any more.

This fact can be justified according to some writers only when the change of circumstances is so essential that to adhere to it would threaten the very existence of the State. The fundamental right of the existence of a State—which is so vital and to which I will refer later—is stronger than any of its obligations. As Hegel said:

> "The relation of States in one of independent units which make stipulations, but at the same time stand above their stipulations."

No State can be limited by its stipulation. If a stipulation limits a State, how will it become a stipulation? It is almost like saying that God cannot be Almighty because then he can create

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something that he cannot destroy, and if he creates something he cannot destroy, he cannot be Almighty.

What puts an end to the treaty is the disappearance of the information on which it rests, or the treaty is ended because we can infer from its terms that the parties—though they have not said expressly what was to happen in the event that occurred—would, if they had foreseen it, have said that the treaty ought to lapse. This doctrine finds its place in the municipal law doctrine of many civilized nations, and most international law is interpreted or rather explained, or justified, in terms of municipal law.

In French law there is the doctrine of "force majeure", where it is not possible to perform a contract because of conditions which are beyond the control of the parties to the contract.

In Germanic law, articles 323, 542, 605, 723, 775 of the German Civil Code also make the same provisions.

In the law of the United States, Sections 454-496 of the American Law Instititute's *Resettlement of the Law of Contracts*, deal with the same matter. The Resettlement does not mean strict impossibility, but impracticability owing to extreme and unreasonable difficulty. In that case the agreement cannot stand.

In Austrian law, article 936 of the Austrian Civil Code makes the same provision.

In English law there is a large number of cases in connexion with it. There is a case called Taylor *v.* Caldwell, one called Krell *v.* Henry and one called Jackson *v.* Union Marine Insuranbe Company (1874) the last, according to my memory, being the most telling case although unfortunately I have not been able to obtain the text of the judgement. In the first case Mr. Justice Blackburn held:

"In contracts in which performance depends on the conti-

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nued existence of a given person or thing a condition is implied that the impossibility of performance arising from the perishing of the person or thing shall excuse performance, though there is no express provision or stipulation that the destruction of the person or thing shall excuse the performance. But that excuse is apparent that the parties contracted on the basis of the continued existence of the particular person or chattel.

"The rule in this case has been extended to contracts the performance of which was held to have become impossible by the non-existence or non-occurrence of a particular state of things forming the basis on which the contract has been made."

What is happening in this case ? The local authorities are no longer there. There are places where there is no Pakistan Army, and what is more there are other circumstances in regard to which the conditions have changed.

Now we come to what Sir Muhammad has placed before this Council regarding the Prime Minister's statement. I am quite certain that the Prime Minister's reputation or his own sense of integrity would not be challenged by any misquotation anybody might make, would have the duty, as a member of the Government of India to correct this matter. Sir Muhammad yesterday quoted from the telegram of 27 October 1947. The Prime Minister of India had already conveyed the assurance to the Prime Minister of Pakistan to the following effect:

"I should like to make it clear that the question of aiding Kashmir in this emergency is not designed in any way to influence the State to accede to India. Our view, which we have repeatedly made public, is that the question of accession in any disputed territory or State must be decided in accordance with the wishes of the peoples, and we adhere to this rule."

This is what Sir Muhammad quoted yesterday. What was

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not quoted was what followed in the same telegram:

> "It is quite clear, however, that no free expression on the will of the people of Kashmir is possible if external aggression succeeds in imperilling the integrity of its territory."

Now, what sense can the first paragraph of the telegram have without the second? I am not for a moment suggesting that the distinguished representative opposite has been guilty of wilful suppression, but it may be that like me he feels tired.

In his broadcast over the All-India Radio on 2 November 1947 the Prime Minister said:

> "We have declared that the fate of Kashmir is ultimately to be decided by the people. That pledge we have given not only to the people of Kashmir but to the world."

Then follow a number of lines which we do not see in our copy of the text of the telegram as it was quoted:

> "We are anxious not to finalize anything in a moment of crisis and without the fullest opportunity to be given to the people of Kashmir to have their say. It is for them ultimately to decide. And let me make it clear that it has been our policy all along that where there is a dispute about the accession a State to either Dominion, the accession must be made by the people of that State. It is in accordance with this policy that we have added a proviso to the Instrument of Accession of Kashmir."

There is another passage which we do not see quoted:

> "We talk about the invaders and raiders in Kashmir, and yet these men are fully-armed and well-trained and have competent leadership. All of these have come across and from Pakistan territory. We have a right to ask the Pakistan Government how and why these people could

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come across the Frontier Province or West Punjab, and how they have been armed so effeetively. Is this not a violation of international law and an unfriendly act towards a neighbour country? Is the Pakistan Government too weak to prevent armies marching across its territory to invade another country, or is it willing that this should happen? There is no third alternative."

There is more, but I do not want to react in the same way there have been references to what has been said by Sir Benegal Rau and Mr. Ayyanger. I read about the Prime Minister just now, and today, the Prime Minister, speaking in Parliament in India, said—this is a Press report:

"Mr. Nehru referred to the President of 'Azad' Kashmir, Mr. Khurshid's recent statement that they would resort to war to 'liberate' the Indian part of Kashmir and also to Mr. Zafrulla Khan's remarks in the Security Council that a second tribal invasion would take place if the Council failed to find a suitable solution. 'Now we have got definite information that for months past Pakistan authorities have been registering names of tribesmen on a monthly salary of Rs. 54.' They were being invited first to function as some kind of levies. Nearly 5,000 men have offered their services in one area but actual recruitment has not taken place. Probably this was taking place elsewhere too. But when these persons were told that they had to go to Kashmir - and they were not at all anxious to go there and perhaps realized they were likely to meet the Indian Army—many of them had withdrawn their names.

"Mr. Nehru said that Pakistan well knew that any such thing as tribal invasion happening would mean 'all out war'. Still they indulged in threats and all their strength lay in military aid they had got from the United States."

This was said today.

Now I want to deal with another matter. It is one which

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does not really concern the Security Council except in so far as Pakistan becomes involved. There have been certain changes in the relations between China, across our border, and ourselves. China claims certain territory as being part of Sinkiang Province at a certain border. Historically, there is another side. I suppose China would say this territory is in dispute, but the Indian Government knows its territory and would not permit this annexation. That matter is not before the Security Council, but the fact is this: this territory is part of Jammu and Kashmir, certain parts are along the border between China and Pakistan and I think Pakistan's allies and the world should know.

Although Pakistan has been in unlawful occupation of a part of the Indian Union territory of Jammu and Kashmir and, as admitted by Sir Muhammad Zafrulla in his statement on 1 February 1962 [990th meeting], Pakistan is committed to the withdrawal of its forces from the State of Jammu and Kashmir, Pakistan has nevertheless sought to negotiate Kashmir's border with Shinkiang with the Government of China. We say categorically that Pakistan has no authority to barter away or negotiate any part of Indian territory and any agreements Pakistan may reach, or anybody else, would have no value in our eyes.

President Ayub Khan and other official spokesmen of the Government of Pakistan quote the Government of Pakistan as saying that this part of the territory of Jammu and Kashmir is Pakistan territory. Then there is a lot more ; some people have been taken in by this ; there was a lot of talk about joint defence by India and Pakistan. Should we ask Pakistan to join our own defence against Pakistan ? Impossible. "Only if India comes to an understanding with Pakistan which will end the aggression in Kashmir can it earn the moral right to demand that China vacate its aggression against Indian territory." That is to say, unless we permit Pakistan's invaders we must admit them elsewhere. This was in one of the newspapers, but I do not attach any importance to what appears in newspapers in serious matter of this kind.

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However I will quote a statement by Foreign Minister Manzur Qadir, at a news conference on 24 May 1960.

> "Asked whether negotiations were still going on between China and Pakistan on demarcation of this border between the two countries, Mr. Manzur Qadir said Pakistan had made a suggestion to this effect but had not heard anything further on the subject."

China is not here to answer and we have not brought this question before the Security Council. Mr. Qadir said that Pakistan had made a suggestion, but had heard nothing further on the subject. Everything Pakistan can do to exploit this, it has done.

In an interview, Lt.-Gen. K.M. Shaik, Food and Agriculture Minister, has said he knew of no Chinese infiltration along the small segment of Pakistan-held territory that adjoins Sinkiang.

> "About Pakistan's relations with China, the President said they were normal. Pakistan had no problems with China and had diplomatic relations with her. However, the border between Pakistan and China in certain area was undefined and they had asked the Chinese Government to define it. The President said indications were that the Chinese Government was willing to do so."

That is to say, in a territory where they had no sovereignty, which they occupy illegally, in regard to which they have a dispute with another country – to put it mildly – they are willing to barter away our freedom in order to create embarrassment for us, irrespective of their professions in other directions. May I say that in either case the common ideology is expansionism.

Here is an editorial in a Pakistan newspaper founded by Mr. Jinnah :

> "...the ruling elements in New Delhi are evidently even

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more disturbed by the fact that, of all the nations who are close neighbours of China in this area, India remains the only one with whom the Chinese find it hard to coexist...

"No wonder that the Indian Government should find all this most irksome, because they have been depicting the Chinese as utter aggressors and the image projected by their propaganda begins to grow less convincing." – We are not aware we are making propaganda by this – "The facts of the matter is that the Indian allegations against the Chinese regarding border aggression seem now to have been more propagandist than truthful. But the campaign was so successful that even some Pakistanis were influenced by it and fell for the bogey of a 'common danger' from that quarter. What most of us failed to see at the time was the clever exploitation of the situation – deliberately exaggerated for the purpose – by India to stampede Americans and others into massive 'help India' compaigns. This is precisely what Mr. Chou En-lai himself has just pointed out. In an interview published in Look magazine the Chinese Premier has said : 'The Indian Government does not want a settlement because they are using it as a card...for obtaining foreign aid'. We have also reasons to believe that certain impartial experts on the Sino-Indian disputes have studied the question and come to the conclusion that the boot was, in fact, on the other leg, and India's own forward policy created misgivings in Peking and forced the latter to attend more diligently to the guarding of China's border with her ambitious rival for Asia's leadership."

This is all from an editorial *Dawn*, dated 20 January 1961. We are not dealing with China's opinions but with Pakistan's opinion on this question and the use Pakistan is making of it in order to embarrass us.

I now quote from *Dawn* of 21 January 1961 :

"When asked if his Government would accept Chinese or eastern bloc aid and arms, Mr. Khurshid said there was

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no reason not to accept it in case it was given without political strings and helped in the cause of Kashmir's liberation.

"He added : 'In fact we have always appreciated the correctness of the Chinese stand in regard to accession'.

"Mr. K.H. Khurshid welcomed reports that China had agreed to a proper demarcation of the Chinese border with nothern areas of Pakistan through negotiations. India, he pointed out, had failed to maintain international borders with China...".

Here I want to say that we have no information that China has given any agreement of this kind referred to by Mr. Khurshid, the President of so-called "Azad" Kashmir. It was published in the paper, and Mr. Khurshid is not supposed to speak without the consent of the Pakistan Government.

Now, from the *Pakistan Times* of 17 February 1961. I quote the following concerning President Ayub :

"Asked about Indian Premier Nehru's reported contention in Parliament yesterday that Pakistan had no such right, as she did not legally occupy the territory in question, the President told newsmen at the Dacca Airport that Pakistan was in legal occupation of the territory."

I suppse the law, for dictators, means what they think. Now, continuing : " 'Mr. Nehru has the right to have his own opininon', he commented."

Now, quoting from the *Times of India*, dated 23 February 1961 :

"In view of the international importance of the area and the danger of foreign intervention in disturbed conditions, the Pakistan Government sent a political agent in the middle of November 1947, to provisionally take over the administration, in order to restore law and order and stabilize conditions..."

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This action was not permitted by the United Nations resolution. In fact, as I have said so many times this afternoon, this was a function which was placed squarely upon the shoulders of the Indian Government, to garrison the area, protect it and stabilize conditions.

I read now from an interview of the Pakistan Foreign Minister, Mr. Manzur Qadir, in the *Hindustan Times* dated 16 March 1961 :

"Mr. Qadir said Pakistan had taken the initiative to negotiate the boundary with China in the middle of last year because of two reasons : first, the constitutional position of the northern areas in this bounary was different from that of the other parts of Kashmir"—Now, how does that square with the previous statement ? I do not know—"and, secondly, Pakistan wanted to be certain of the line beyond which Pakistanis should not go and fix the line beyound which Chinese would not come.

"China, Mr. Qadir said, had not responded immediately but had requested for time to consider the matter."

I am not placing any commitment on the border of China because we have not heard from the Chinese in Peking ; nothing has been written to us, there has been no exchange of notes. We have not heard, so far as my papers say, that there has been any communication. But the fact remains that Pakistan has been negotiating and fishing in these troubled waters. "Pakistan," says the *Washington Post* of 9 July 1961, no friend of India "by considering India her number one enemy is embarking on a flitration match with Communist China, India's number one enemy." Well, we did not say either one is our enemy. Pakistan is a friend of ours.

President Ayub, in an address to the National Press Club in Washington on 14 July 1961, said : "Pakistan will go ahead in negotiations with Communist China to define the common border between China's Sinkiang Province with Pakistan, which is now undefined". He said it is in the interest of both China

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and Pakistan to do this". Asked whether Pakistan wanted to sign a treaty with Communist China about their common border, President Ayub replied: "There is no need for a treaty. There is a common border between Pakistan and China on the Sinkiang border. It is ill defined. All that we want is that it should be defined. It is in the Chinese interest and our own interest."

President Ayub was further quoted, at his monthly Press conference as having spoken as follows. He said that Pakistan had conveyed to Peking her willingness to demarcrate her border with the latter. China had replied that she was examining the proposal and when they were ready they would let Pakistan know about it. Pretty cautious. Then later: An Indian correspondent had asked whether it would not create difficulties if Pakistan at this stage were to negotiate border demarcation with China and whether that would not weaken the cause of "democratic forces in Asia." President Ayub had replied it would be very good for democracy if the causes of friction between neighbouring countries were removed. This is from the *Pakistan Times* of 4 October 1961.

Mr. Khurshid also amnounced that the Chinese Government representative was visting South Kashmir. He said: "In fact, my Government would welcome such a visit". There has been no announcement on the Chinese side on this question, however.

There are many more of these extracts, but I do not propose to read them. Now, Mr. President, if I may, I will finish in about fifteen minutes.

First of all, we want to say that these meetings have begun in the context of the threat of armed invasion being repeated all over the place. There have been these things going on, but on account of the shortness of time I am not able to recite before this Council the incursion into, the violations of our territory that have taken place in recent times. In the last five years there have been an average of ninety incidents every

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year inside Indian-administered Kashmir were bombs and other things have been exploded—intricate equipment that could come only from the Pakistan Army. Saboteurs have broken up bridges and terrorized the population ; in village clubs and schools and places of worship, in several cases mines and anti-personnel mines were used which were sent to our colleges of research and were revealed to be of Pakistan origin. There have been 400 cases of bomb explosions in Jammu and Kashmir and the usual story is that the people of Jammu and Kashmir are discontented—all of which you must know about from your own inferences, both from the election results and from the conditions of prosperity shown by the figures which I read out to you. Inside Kashmir this degree of sabotage and subversion is taking place. We charged the Pakistan Government also, both publicly and in our communications with them, that their agents have been committing espionage in our territory. A Pakistan national, arrested in November 1959, disclosed how saboteurs were trained in Rawalpindi, in Pakistan. They were given practice in the use of various weapons including sten-guns and hand-grenades, TNT slabs—which we have had analysed in our laboratories—plastic explosives, detonators and time-pencils. All these things have been given in large quantities to people who come to commit sabotage. He also brought sums of money.

Another Pakistan agent, Abdul Rashid, was arrested in September 1957, and his interrogation brought out the fact that Pakistan intelligence was preparing to organize subversion and sabotage in other parts of India. I will not read the whole of that story, but I want to tell the Council something that concerns us deeply. Plans were hatched in Pakistan for the purpose of assassinating the Prime Minister of India and our important Indian leaders. The part played by Pakistan intelligence in such plans was revealed during the case of a man arrested in 1958. Pakistan intelligence officers had provided him with arms and ammunition and money and had given him intensive training with a view to the assassination of top-ranking leaders in India. He was asked to accomplish his mission of assassina-

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ting the Prime Minister during his journey to Kulu in 1958. The Prime Minister had gone on a holiday. This man, however, was arrested before he could carry out his plans. He was prosecuted for conspiracy to commit murder and sentenced to seven years of rigorous imprisonment in 1961, along with three accomplices. Pakistan had placed ample funds at his disposal to aid him in carrying out his nefarious mission : ten hand-grenades, twenty detonators, one revolver, one pistol and two sten-guns were found in his possession.

My distinguished colleague from Pakistan has referred to some other matters in a conspiracy trial that is now going on in Kashmir. I have got the same liberty as he has. I am quite prepared to over-look the fact and think that the acquaintance of Sir Muhammad with the Indian judiciary is some what remote it is now about twenty years.

But it is not our practice to be in contempt of our judiciary and we would be if we were to refer to matters that are *sub judice*. These men have been committed to sessions; they were tried, the trial lasted for years, not because anyone in the judiciary was preventing it, but because the accused, with the assistance of Pakistan, used obstructive tactics. The process of law has to be gone through, and it took time. These have been committed to trial. I believe that their defence counsel is coming from England. The trials are open, the proceedings are open, for anybody to read. I cannot comment on them because, both as a member of the Indian Bar and as a citizen of India, it would be regarded as extremely improper for me to deal with matters that are before the judiciary.

In conclusion, our position is that, first, the accession to India, which has been challenged, is full and complete ; there is no such thing in our Constitution as provisional accession. Secondly if that accession has to be altered, it has not only to be the acceding side, but the receiving side that also has to agree. Then the question of the plebiscite has been raised. The only basis for the plebiscite is this resolution of 5 January 1949 which provides a plan and, as I have said, first of all the

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conditions are not there. What is more, twelve years have elapsed and we categorically say that we are not prepared to do anything in any part of India that will shake the stability of our country, undermine our economy or create conditions of trouble in South-East Asia. There is no provision in our Constitution for the secession of any State.

I want to say here again that the statements attributed to Lord Mountbatten on the one hand and to my Prime Minister on the other are quotation in part and not in full ; secondly, what it really means is that while the legal accession has taken place to the Head of the State, and that is good enough for the purpose of law, we were not with our hostility to feudal and arbitrary rule on the one hand, our sympathies and our affiliations with the national movement in Kashmir on the other, prepared to regard that as sufficient : we wanted some moral support of it, and that moral support we gained immediately as best we could, in the same way as the British did in India, by consultations with the national movement. Thereafter, as soon as it was possible, not even waiting for the raiders of the Pakistan Army to go, we established elections and the first elections were almost simultaneous with the elections in India. Three general elections have taken place with a free Press, with anything from 50,000 to 70,000 visitors going into Kashmir without obstructions from anyone except for the normal procedures with regard to visas and so on.

Therefore, we are not prepared to change any of these questions, whatever might have been said at that time, or on one single word or on a discussion of anything, Reference was made by Sir Muhammad about the discussions that went on between Mr. Bajpai, I think it was, and the United Nations people with regard to what he called "the quantum of troops to be withdrawn" and so on. I want to say here and now that they were not negotiations, that they were discussions to the effect that if the truce came and if this was preparatory in that way – then such might be the case.

Therefore, our submission on the one hand is that the

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challenge to the accession of Kashmir to India just gets nowhere. Secondly, the sovereignty of the Union over this territory has been admitted by the United Nations, by leading members of this Council who have not sided with us in condemning or taking action against Pakistan with regard to aggression.

I say this, and I hope Governor Stevenson will excuse me, we fully and completely accept the statements made by successive President and statesmen in the United States that the military aid given to Pakistan is not intended by the United States to be used against us. But equally the fact cannot be escaped that guns that fire only in one direction have not yet been invented. What is more, we cannot escape the fact that Ayub Khan, before he became President, talked about these weapons in relation to the enemy on the riverine side. Only a few months ago the President again said that "in our hostilities —whatever it may be—with India" they would use everything they had in their possession. I think that the accession to strength, the position taken by the Baghdad Pact, when the Turkish Government and the Iraqi Government which at that time held a different position, was that they felt concerned about the position of their ally Pakistan, their military ally, whatever were the other implications.

So far as our frontiers are concerned, dangerous conditions exist, and we cannot ignore these conditions. Nor can we ignore the fact that in our troubles with China, like all other things, we hope they will be settled in due course and that wisdom will dawn and that there will be no new attempt to force issues. We cannot ignore either the fact that our neighbour, whose citizens were our nationals only a few years ago, should try to fish in these troubled waters. All these things are not facts which we can tolerate, which we can acquiesce in. Our submission, therefore, is that this matter has come before the United Nations and we have done everything we have to do. We have honoured the cease-fire line although it runs through the middle of our country. I have not had the time to tell you about these violations of the cease-fire line, and I am

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sorry to say that the balance has been very heavily tilted against us because under the rules 500 yards of this territory is not to be occupied or entered into by armed personnel. When Pakistan personnel in uniform who are armed come through, the Commission tells us, "These are civilians, we cannot do anything about it." When the Kashmir police, not the Indian Army, take protective measures, they turn around and tell us that it is against the cease-fire agreement.

I also wish to say that there are certain circumstances that I will not go into at the present time as regards the defence of our frontiers and our integrity. If we are to accentuate the strength in the territory of the Union and in Jammu and Kashmir, not necessarily in relation to these resolutions, our hands cannot be tied behind our backs. I am quite sure that a majority of you understand our position in this matter. We are not going to allow the cease-fire agreement or anything else which is as of now dead as a dodo, to be pleaded in bar against the security of our land. If our border roads are to be built, their base is in Kashmir. These territories are to be opened up. That is our only position. Therefore, the circumstances having changed, there is only one submission we make, the one that we made in 1957. Then, one of my countrymen asked me why Sir Muhammad Zafrulla Khan was coming here. I told him not in jest, not in ridicule, "After he has been Foreign Minister of Pakistan, after he has been a judge at the International Court, he has matured in years and, even more, he has come to understand all these matters. It may well be that the Pakistan Government is going to tell the Security Council that it propose to vacate the aggression". We did not hear anything of kind. Since Sir Muhammad always likes to quote the Koran, and I do not know any Arabic I can only tell him :

> "Fight in the war of Allah against those who fight against you, but begin not hostilities. Lo! Allah loveth not aggressors."

Another saying :

> "And whoso committeth a delinquency or crime, then

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throweth [the blame] thereof upon the innocent, hath burdened himself with falsehood and a flagrant crime."

Another saying :

"Whoso doeth that through aggression and injustice, we shall not cast him into fire, and that is an ever easy way for Allah."

We have gone through very difficult times—and as the Minister of Defence I ought to know—in the last twelve or eighteen months when not only probing actions were taken but action of a character that it is only with a very great deal of restraint that we frained from using force. Parts of the territory which are even on this side of the cease-fire line have been sought to be occupied. On the international frontier where there is no cease-fire line—I am not now referring to other parts but to Jammu and Kashmir—there have been violations of this kind. Would it be wrong thinking to say that the limit of patience of any country in the interest of peace can be reached ? I say before this Council, in spite of all that has happened, that the Govenment of India and the Union will not take the initative in war action. That is the only pledge we make here. That does not mean that we shall not defend our sovereighty, our integrity, the honour and the lives of our people with everything we have got, military allies or no military allies, arms or no arms. This is no threat, but it is a defensive statement.

I am asked by my Government to say that, irrespective of our moral, our political and our legal rights, irrespective of all deception that has taken place with regard to the Security Council, irrespective of these great nations which have sat around us all these years not having raised a finger to us in this matter, not having addressed themselves to the question of aggression—irrespective of all this, the people, the Union, the Government of the Union and the Prime Minister will never, any of them, take any initiative in war action. During the last two or three years there have been--and I am not speaking

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fancifully—repeated attempts by the Pakistan Govenment to collect large numbers of unarmed civilians and to release then in our territory, if they came without uniforms or they are put into concentration camps. They are fed, because in India we do not starve people : we do not need to do so now. But if our territory is violated in comparatively small ways—these people come and cut telegraph wires—under our law we can shoot them. However, we do not. We can do a lot of things, but we do not do them because these people are citizen of our land. Most of them come from "Azad" Kashmer. Others may be Pakistanis who have relations on the other side.

So, while the Government of India will exercise its patience and its liberal outlook in this matter, we rely very largely on international public opinion. We are depressed, but we have not become cynical. We have not lost hope that this Council, after the passage of years, will realize what the basic question is. Even if it were argued for a moment that we have no right to be in Kashmir, except what has come about at the invitation of a people that was invaded, what right had the Pakistan Army to go there at all ? Can there by any semblance of any right of any kind ? Did any body ask them to go there ? No. They have said that it is a liberation movement, but I have dealt with that.

Therefore, I repeat this pledge that, in spite of our moral: our political and our legal rights, in spite of the serious difficulties we have in that part of India, we shall not try to force a solution by force of arms. We, as a country, are in friendly relations with the so-called East and the so-called West. Our relations with China were happy, and we hope they will continue to be happy in the time to come. But, as I say, in spite of all our difficulties we shall not try to force a solution by force of arms. But again I say that the patience and restraint of a country, and its conformity with law, should not be interpreted as subservience. That is a mistake. Then, afterwards, they turn round and tell us that "the image of India has been distorted". The distortion does not come from our side,

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and therefore I will plead with this Council not to be stampeded into any action that will only make things worse.

This is the 104th meeting on this subject, I believe. You can hold 200 meetings. We will come here every time you ask us, but on no condition shall we trade our sovereignty. On no condition shall we sell our heritage. On no condition shall we open the door for the disruption and the disintegration of India, which would be a calamity not only for the Indian people but for the whole of that part of the world. On no condition shall we be forced by provocation of the kind that I have read out to the Council—provocation coming from the head of a State—into a position of taking the short cut of a military feat for forcing the abdication of Pakistan. Bnt we have faith in the growth of democracy in that country, which must come even after twenty-five years : in the growth of the people who are friendly to us : and in the growth of public opinion, as well as in the conviction that will grow in this Council itself. What is more—and this is our main faith – we have confidence with regard to the conditions of the people in the area that is part of the Union. Today there is prosperity in Kashmir. There is no unemployment there. Today the people there are literate, and there is freedom of expression. There are, of course, frailties of administration, as in any other part of India : we do not claim protection. But the equilibrium will shift, and the people of Kashmir, on both sides, who are pledge to the unity of their State and the unity of the motherland—will accomplish it by themselves.

The PRESIDENT : Although I have another speaker on my list, the representative of the Soveit Union, he has agreed to speak at the beginning of our next meeting. I have another request for permission to speak at the next meeting, so perhaps we might adjourn now and meet again tomorrow morning at 10.30.

It was so decided.

The meeting rose at 7.15 p.m.

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ANNEX

Jammu and Kashmir—Develoment in freedom

[*Document submitted by the Indian delegation*]

Before 1917, Kashmir was a poor backward region of India.. The feudal regime under which the State had been ruled for centuries did not provide for any development, econmic, social or political.

In October 1947. Kashmir acceded to India and be came a constituent State of the Indian Union.

Following the elections on the basis of adult suffrage, a Constituent Assembly met in 1951 and framed a democratic constitution which was inaugurated after another general election in 1957.

Like other States in India, the Government of Jammu and Kashmir has already implemented two Five-Year Plans of economic development (1951-56 and 1956-61) and is now executing a third (1961-1966), the target of investment of which is $ 150 million*.

The figures given belows indicate the progress made by Jammu and Kashmir State in the two Five-Year Plans :

	Per-1951	1961
Investment.....	$ 25 million	$ 67 million
Revenue.....	$ 5.5 million (1947)	$ 23.5 million (1959-60)
State income at 1955-1956 Prices.....	$ 110 million (1950-51)	$ 160 million (1959-60)

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Per caput income at 1955-1956 Prices	$ 38 (1950-51	$ 48 (1959-60
Food production	300,000 tons Per-1951	500,000 tons 1961
Power potential	4.360 kws	10,000 kws
Number of factories	44 (1947-48)	138
Roads per 100 sq. miles	2.5 miles	40 miles
Tourists	27.207 (1943-44 Peak tourist year)	71,000
Number of pupils in Primary Schools	65,000	197,000
Number of High and Higher Secondary Schools	52 (1947-58)	262
Literacy	6.6% (before 1947)	12%
Number of trainees outside the State	Negligible	3,179
Per caput expenditure on public health	$ 0.13	$ 0.76
Number of hospitals and dispensaries	89 (1947-41)	349
Average life expectancy	32 years	47 years

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